

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF TEXAS

3 MARSHALL DIVISION

4 SYNQOR, INC.,) (

5 PLAINTIFF,) (CIVIL ACTION NO.

6) (2:14-CV-287-RWS

7 VS.) (MARSHALL, TEXAS

8) (

9 VICOR CORPORATION,) (OCTOBER 25, 2022

10 DEFENDANT.) (8:46 A.M.

11 TRANSCRIPT OF JURY TRIAL

12 BEFORE THE HONORABLE ROBERT W. SCHROEDER III

13 UNITED STATES DISTRICT JUDGE

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Official Court Reporter
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25 (Proceedings recorded by mechanical stenography, transcript
produced on a CAT system.)

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1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Please be seated.

5 Good morning, everyone.

6 I apologize for the slight delay. There's always
7 a lot of last-minute things to tend to with respect to the
8 instructions, and we're making some final changes to them
9 right now.

10 I reviewed the motion that was filed by SynQor at
11 the close of the Defendant's case yesterday. I know that a
12 response to it was filed on the docket later in the
13 afternoon or early evening. I've had an opportunity to
14 read those. Be happy to hear any arguments the party --
15 parties wish to make now, though.

16 Mr. Rogerson?

17 MR. ROGERSON: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. ROGERSON: The premise of our motion
20 fundamentally is that we think Vicor, through the evidence
21 at trial, has not presented a legally sufficient
22 evidentiary basis for a jury to find in its favor on its
23 state law counterclaims.

24 Vicor had the opportunity to try these claims. It
25 offered proof, and it came up short.

1 Under Massachusetts law, based on the cases we
2 cited in our brief, Vicor needs to show some kind of actual
3 damage that it suffered as an element of both of its
4 claims. Massachusetts law is clear on that point.

5 Now, if Vicor has proven that there was some kind
6 of actual damage but can't quantify the amount of it, then
7 perhaps it would be entitled to recover nominal damages as
8 a remedy. But that's only if as an element of the claims,
9 it first proves some kind of actual damages. Proof of
10 actual damage is an essential element under Massachusetts
11 law. And the testimony that Vicor offered at trial doesn't
12 establish that.

13 Vicor called its witness, Mr. Davies, and
14 attempted to put some proof in. But the testimony
15 Mr. Davies offered was brief, speculative, it was
16 conclusory, had no specific facts, concrete proof, and much
17 of it was ultimately excluded by Your Honor as hearsay.

18 This situation is fundamentally what judgment as a
19 matter of law is for when a party presents a claim but
20 fails to offer evidence on an essential element of that
21 claim, and, therefore, a reasonable jury could not find in
22 its favor.

23 And if Your Honor had questions about the parties'
24 briefing, I'd be delighted to answer them.

25 THE COURT: I don't. Thank you, Mr. Rogerson.

1 MR. ROGERSON: And perhaps I'll make one final
2 comment before I sit down.

3 THE COURT: Yes.

4 MR. ROGERSON: Which is I believe Vicor in its
5 response noted that there are various types of actual
6 injuries, the party could suffer financial injury,
7 reputation, goodwill.

8 We're not clear from our point of view whether the
9 case law really establishes that, but we just wanted to
10 make clear our view that even full stop crediting that view
11 of what could count as an actual injury, we believe there's
12 been a fundamental failure of proof to establish any of
13 those things based on the record.

14 Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Rogerson.

16 Mr. Dacus?

17 MR. DACUS: Thank you, Your Honor. Since counsel
18 was focused on the damages issue, I'll focus on that, also.

19 The law is clear under Massachusetts for both
20 claims, Your Honor, that reputational harm or what the
21 cases call adverse effect is sufficient, and neither of
22 those must be quantified -- they are quantified here, and
23 I'm going to talk about it, but they need not be quantified
24 for the cause of action to survive.

25 The jury can award nominal damages. The cases are

1 absolutely clear on that point. I heard counsel say that
2 they weren't clear on whether or not that's the law. We
3 cited the Court to multiple cases. I've seen none from the
4 other side.

5 We absolutely put on evidence, at least through
6 Mr. Davies, directly saying there was reputational harm,
7 that there was adverse effect.

8 This confidential information, which by the way,
9 it's essentially undisputed that Mr. Davies testified this
10 information that was shared was confidential. Indeed,
11 SynQor's own policies classify this information such as
12 customer lists, pricing, forecasts, trends. SynQor's own
13 policies identify that information as confidential.

14 That information was shared within SynQor to its
15 salespeople, and then also shared to third parties.

16 Mr. Davies unequivocally testified that there was
17 reputational harm and adverse effect generally, but then he
18 also went on to specifically testify -- and by the way,
19 this testimony was not excluded -- that there was specific
20 discussions with Raytheon, Fujitsu, and Cisco, three
21 specific customers.

22 We put into evidence, and it's undisputed through
23 the OM report, that one tab -- at least one tab of that OM
24 report had potential forecasted customers. The annual
25 amount of those sales were \$29 million, thus quantifying

1 the potential harm.

2 In addition, Mr. Davies's testified and it's
3 un rebutted that in his experience as a long-tenured sales
4 person that somewhere between 1 and 10 percent of that
5 annual \$29 million may have been adversely affected by the
6 disclosure of this confidential information.

7 So in the end, Your Honor, the bar for these two
8 claims, both statutory and common law in Massachusetts, is
9 low. Nominal damages may be awarded. They're sufficient.
10 Adverse effect and reputational harm is sufficient.

11 But, here, we also have quantifiable damages in
12 the record that are essentially undisputed at this point.

13 And so for that reason, Your Honor, we would ask
14 that the Court deny SynQor's motion.

15 THE COURT: Thank you, Mr. Dacus.

16 MR. DACUS: Thank you.

17 THE COURT: Anything else, Mr. Rogerson?

18 MR. ROGERSON: Yes, Your Honor.

19 Just a few points, Your Honor, quickly.

20 First of all, I want to be clear, our brief and
21 our position I think is that Massachusetts law is clear
22 that nominal damages may be awarded only if there's proof
23 offered of some actual injury. It doesn't mean the injury
24 has to be quantified, but it has to be proven that it
25 exists.

1 For example, if a customer was lost and it's
2 proven that a customer was lost and the amount of business
3 that customer might have provided in the future is
4 uncertain or hasn't been quantified, perhaps in that kind
5 of scenario, nominal damages would be available.

6 But if there's no proof of any underlying actual
7 injury in the first place, that's an element of the claims,
8 nominal damages cannot be awarded.

9 On the forms of proof that counsel discussed, I
10 just want to note that even at the podium, its proof is
11 couched in speculative terms, potential loss, customers may
12 have departed. There's no concrete proof in the record
13 that any customer believe the statements Vicor points to
14 ceased to do business with Vicor as a result of it.

15 If Vicor wanted to prove its case, there are
16 multiple ways to do it. Could have called the customer to
17 testify, could have taken the deposition of even one
18 customer, done an analysis of any kind, its sales, its
19 business record, put in its own business records into
20 evidence, the way the parties prove their cases -- prove
21 their case for other claims in this case. None of that has
22 happened here, Your Honor.

23 And, finally, we'll just note in our papers, we
24 think for at least Chapter 93, in particular, there's a
25 fundamental issue of whether Vicor's claims have the

1 necessary connection to the state of Massachusetts, and we
2 believe the papers present that argument.

3 Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. DACUS: Very briefly, Your Honor.

6 I'm confident I probably don't need to say this to
7 the Court, but on this issue of specific harm, Mr. Davies
8 testified specifically that with respect to Raytheon, that
9 they do business -- "they" being Vicor -- does business
10 with Raytheon all over the country except in one particular
11 location, and that is in -- within a Texas division of
12 Raytheon where SynQor actually has that business. There's
13 specific testimony on that issue.

14 In addition, there was video deposition from
15 Ms. Biskamp, who was the Kruvand third-party seller for
16 SynQor, and she specifically testified that there was a
17 Vicor attack list at Kruvand and that that Vicor attack
18 list was used to target Vicor customers, and that that
19 Vicor attack list came from the confidential OM report.

20 It's hard to imagine more specific testimony and
21 more specific instances of harm.

22 That's all I have on that, Your Honor. And we
23 certainly believe that we've met the small or evidentiary
24 burden that Massachusetts law requires.

25 THE COURT: Thank you, Mr. Dacus.

1 MR. DACUS: Thank you, Your Honor.

2 THE COURT: Okay. As I said, I carefully reviewed
3 the motion for judgment as a matter of law on the state law
4 counterclaims. That was Docket No. 719. I reviewed the
5 response filed by Vicor last evening. That was Docket
6 No. 722.

7 In preparation for that motion and in light of the
8 parties' arguments, I also reread pertinent sections of the
9 R&R by Judge Baxter denying summary judgment on these
10 issues. His R&R is found at Docket No. 626.

11 And I want to say just a couple of things.

12 When considering a motion for judgment as a matter
13 of law, I'm required to review all of the evidence that's
14 in the record drawing all reasonable inferences in favor of
15 the non-movant, giving credence to evidence that supports
16 the movant that is uncontradicted and unimpeached.

17 I also have to refrain from making any credibility
18 determinations or weighing the evidence. Those are
19 functions of the jury, of course.

20 A JMOL should be granted when there's no legally
21 sufficient evidentiary basis for a reasonable jury to find
22 on an issue on which that party has been fully heard. And
23 that usually happens in one of two types of situations.

24 The first where there is a complete absence of
25 pleading or proof on an issue that is material to the claim

1 or the defense, or in the second situation, where there's
2 really no controverted issue of fact on which reasonable
3 persons could differ.

4 If the evidence construed in the light most
5 favorable to the non-moving party allows only one
6 reasonable conclusion, judgment of a -- as a matter of law
7 is proper. However, if reasonable minds could differ as to
8 the significance or importance of the evidence, JMOL should
9 be denied and the case submitted to the jury.

10 On this motion, having considered the filings by
11 the parties and the arguments made, I am of the opinion
12 that SynQor's motion should be granted.

13 First, regarding Vicor's tortious interference
14 claim, Vicor has not established actual damages. Vicor has
15 not shown loss of money or property, real or personal, as a
16 result of SynQor's conduct.

17 Instead, in the filings last night -- filing last
18 night and again in argument this morning, Vicor focuses on
19 Mr. Davies's testimony that it would be reasonable to
20 expect that Vicor lost business over SynQor's conduct. And
21 I don't think that that type of inference is sufficient
22 enough to establish actual damages as required by law.

23 With respect to the 93A claim, Vicor has failed to
24 rebut SynQor's showing that the actions allegedly giving
25 rise to the claim are not primarily and substantially

1 within the commonwealth of Massachusetts.

2 Instead, Vicor's focus has been on the fact that
3 both parties manufacture converters in Massachusetts, and I
4 think that focus is misplaced because it is not the
5 manufacturing or the locus of the manufacturing that gives
6 rise to the claim.

7 In this case, it is the use of allegedly overly
8 aggressive sales tactics, but based on the evidence I
9 recall, all of those actions took place in Texas.

10 So that will be my ruling. SynQor's judgment --
11 motion for judgment as a matter of law on the state court
12 counterclaims is granted.

13 With respect -- Mr. Dacus?

14 MR. DACUS: Your Honor, may I say something just
15 for completeness of the record, and I understand the
16 Court's ruling and accept it.

17 With respect to that Section 93 claim, so that the
18 record is clear, the testimony was, at least in part, that
19 Mr. Weeks, who was the purveyor of the confidential
20 information, gave a presentation in Boxborough,
21 Massachusetts. The Court may recall that there's an email
22 asking him to come to a sales meeting in Boxborough,
23 Massachusetts in order to deliver to the other salespeople
24 within SynQor the confidential information that not only he
25 had given to SynQor but that he was aware of.

1 So I understand the Court saying, you know,
2 there's evidence of manufacturing, but there is additional
3 evidence in the record at least that -- in that particular
4 instance -- and by the way, Mr. Weeks testified by video
5 deposition that he actually attended that meeting and that
6 he actually presented to the sales people at SynQor related
7 to that information.

8 So that is -- those are facts in the record. I
9 want to make sure that's clear because I understand the
10 basis of the Court's ruling, at least as to the Section 93
11 claim relates to the locus of the accused infraction. So I
12 wanted to get that on the record, Your Honor.

13 Thank you.

14 THE COURT: All right. Very well, Mr. Dacus.

15 With respect to the motion for judgment as a
16 matter of law that I think was filed very, very early this
17 morning, Docket 725, there's not been a response filed to
18 that, obviously.

19 The parties wish to be heard on that motion?

20 MR. SCHMIDT: Your Honor, we'll respond orally.

21 Docket 725 is SynQor's motion for judgment as a
22 matter of law on the infringement issues.

23 We contend there's substantial evidence for this
24 jury to find non-infringement on the record presented.

25 First, there's evidence that not all elements of

1 the asserted claims have been met. For example, there were
2 errors in the methodology of SynQor's expert that were
3 highlighted to the jury. There was a failure of SynQor's
4 expert to test at least three of the five representative
5 products that the parties stipulated to.

6 It's undisputed that the majority of the products
7 did not literally infringe the short transitions
8 limitation, or the products that do not literally infringe
9 the short transitions limitation, SynQor is relying on the
10 Doctrine of Equivalents.

11 However, their expert admitted that the function
12 of the asserted claims is different from the purported
13 function of the accused devices.

14 There's also substantial evidence to find that
15 Vicor did not intend to induce or contribute to the
16 infringing acts. For example, there's evidence that Vicor
17 held a good faith belief of non-infringement, that Vicor
18 has fundamentally different technology, that Vicor
19 practices its own patents, that SynQor did not believe that
20 Vicor infringed the patents, as shown by its delay in
21 bringing the lawsuit, its exclusion of Vicor from the 497
22 case.

23 There's also evidence in the record that Vicor
24 expressly took actions to avoid infringement, which also
25 negates the intent for infringement, that is embodied in

1 the documents that were sent to Cisco in the lengthening
2 transition times in response to the 497 verdict.

3 So based on all these facts, we think that there
4 is substantial evidence to find non-infringement, and, in
5 fact, we have a cross-motion for our own judgment as a
6 matter of law that no reasonable jury could find
7 infringement on this record.

8 THE COURT: And has that been filed yet?

9 MR. SCHMIDT: It has, Your Honor. I don't have
10 the docket number handy, but I can track it down.

11 THE COURT: Understood. That's fine.

12 Any response?

13 MR. HATCHER: Your Honor, we stand on the papers.

14 THE COURT: Okay. I think you all have made your
15 record. Your filings are in. I think on this issue,
16 unlike the previous issue, I think that the appropriate
17 ruling here is to carry the motion for judgment as a matter
18 of law.

19 Obviously, depending on how the verdict turns out,
20 the parties, of course, may file renewed motions for
21 judgment as a matter of law under Rule 50, and at that
22 point, a more careful, considered scrutiny of the record
23 will be -- and the transcript of the testimony will be
24 available.

25 So that will be my ruling as to that.

1 Any questions about either of those rulings?

2 MR. PAK: No, Your Honor.

3 MR. REIN: No, Your Honor.

4 THE COURT: Okay. We have completed jury
5 instructions. We spent a fair amount of time in the
6 courtroom yesterday afternoon going through jury
7 instructions, have looked through all of those.

8 The parties did attempt to resolve some
9 differences. I don't think there was any substantial
10 movement to that end.

11 And so I've made decisions based on what I think
12 is the correct instruction on each of the areas where we
13 had disagreement.

14 And we will distribute those now.

15 Mr. Schmidt, Ms. Hausman, Mr. Rogerson, if you all
16 would familiarize yourself with them, you'll see what we've
17 done. We'll give you plenty of time to look through those.

18 If you want to put objections on the record before
19 we do closings, I think there should be time to do that.
20 We'll just kind of see where we are.

21 So you all take a few minutes, review all those,
22 and when you're ready to go back on the record, we can do
23 that. Fair enough?

24 MR. PAK: Thank you, Your Honor.

25 THE COURT: All right. Thank you all.

1 (Recess.)

2 THE COURT: Okay. We are back on the record.

3 We've distributed copies of the final
4 instructions. Be happy for the parties to put their
5 objections on the record at this time or any typos, knits,
6 anything like that that we've missed or duplicative
7 sentences or the like.

8 So whoever wishes to go forward, please do so.

9 MR. SCHMIDT: Your Honor, Vicor generally has
10 three objections, and maybe we could go back and forth.
11 I'm going to start with the one that's most important to
12 us.

13 This is on Page 31 to 32 of the jury instructions.
14 And this is the instruction to the jury that the jury is
15 not to consider any evidence they heard relating to the
16 counterclaims.

17 And I previewed some of this yesterday, Your
18 Honor. The issue here is that the evidence that the jury
19 heard related to the counterclaims goes to multiple issues
20 in the case, including the intent for indirect infringement
21 and the intent required for willfulness.

22 And let me just put this into context. The
23 allegation has been made in this case that Vicor was
24 performing competitive analysis on SynQor, and Vicor felt
25 like it was falling behind technologically. There was an

1 email up there about our 10-plus year technology cannot
2 compete with SynQor products, and because of that, we're
3 motivated to copy their products and intentionally infringe
4 the patents.

5 And the fact that SynQor was doing this sort of
6 activities that were alleged in the counterclaims at this
7 time is relevant to putting that information into context
8 because it begs --

9 THE COURT: Well, why is that? Help me understand
10 why.

11 MR. SCHMIDT: Sure, Your Honor.

12 If it is true that Vicor honestly felt like its
13 10-plus year technology was falling behind and couldn't
14 keep up with SynQor's technology, then why is it that
15 SynQor was doing these activities out in the marketplace?
16 Why is it that they had to take sales information --
17 confidential sales information and use it in the way that
18 they did?

19 If they really -- if SynQor really had a
20 competitive advantage in terms of technology, then we
21 wouldn't see the types of things that we see in the
22 counterclaim evidence.

23 So this is evidence that rebuts at a minimum those
24 sorts of allegations that have been made. It goes directly
25 to the issues of willfulness. It goes directly to the

1 issues of intent that's required for indirect infringement.

2 It also goes to issues of witness credibility.

3 THE COURT: So help me understand how that goes to
4 Vicor's intent. It may go to SynQor's intent, but how does
5 it go to Vicor's intent?

6 MR. SCHMIDT: Well, it rebuts their allegation
7 that we had intent to infringe their patent, Your Honor.

8 So their theory is, is that because we were --
9 their theory is because they think we were -- or they think
10 we think that we were falling behind technologically that
11 we were motivated to intentionally infringe their patents.

12 It's simply not true, and all you have to do is to
13 look at their conduct in the marketplace. Because the way
14 they were behaving in the marketplace is completely
15 inconsistent with the idea that we were technologically
16 inferior, and, therefore, we had to resort to infringing
17 their patents intentionally.

18 So for that reason, this evidence really is
19 intertwined with all of the intent issues in the case.

20 THE COURT: Well, so I guess the question I would
21 have for you, then, Mr. Schmidt, is there a way to modify
22 that instruction to take those concerns into account?

23 MR. SCHMIDT: Let me take a look at it, Your
24 Honor.

25 MR. PAK: Yes, Your Honor, may I approach?

1 THE COURT: Yes, of course.

2 Maybe adding the word "solely."

3 MR. PAK: Yes, solely for the --

4 THE COURT: Between "evidence" and "relating."

5 MR. PAK: Yes, disregard any evidence -- well, I
6 think you should just say, Your Honor, that the Court has
7 granted judgment as a matter of law in SynQor's favor in
8 these claims. You should disregard -- you should not
9 consider such evidence only for the purpose relating to the
10 counterclaims, but they may be used for other purposes in
11 your evaluation of the claims.

12 THE COURT: Okay. Well, let me --

13 MR. PAK: Or something like that.

14 THE COURT: You all think about that.

15 MR. PAK: Yeah.

16 THE COURT: Maybe let me hear from SynQor before
17 we --

18 MR. PAK: Yeah, and also just one more note, Your
19 Honor.

20 Obviously, we're going to be appealing these
21 issues on the counterclaims, Your Honor. We understand
22 that Your Honor has made a ruling, but we're going to be
23 obviously appealing these issues.

24 THE COURT: Sure, sure.

25 MR. PAK: One thing I -- because it may be

1 confusing to the jury, one thing we might say is,
2 accordingly, this issue has been resolved by the Court.
3 However -- so you should, therefore, disregard any evidence
4 relating to these counterclaims for the sole purpose of the
5 counterclaims, but you could consider -- you should -- you
6 may consider such evidence for other purposes in this case.

7 Something along those lines, Your Honor.

8 But I think it is -- given that this issue hasn't
9 been fully resolved and we're going to have to appeal these
10 issues -- and one thing I don't want to do is have to come
11 back and have to retry the case because there was some type
12 of reversal on that issue.

13 And I think that it simply, Your Honor --

14 THE COURT: Is there a way for the instruction to
15 avoid that --

16 MR. PAK: Yes. I --

17 THE COURT: -- potential result?

18 MR. PAK: Well, I'm not sure that there's a way to
19 resolve it completely, Your Honor, but I think that at
20 least with respect to the instruction, we do think it would
21 be prejudicial since we don't have final resolution on
22 these claims to say that the Court has granted judgment as
23 a matter of law in SynQor's favor in these claims because
24 they may not understand that there's an appeal process.

25 Instead, it may be more appropriate to say

1 basically that instead of going to this, this issue has
2 been resolved, you may not consider the evidence you heard
3 relating to the counterclaims for the purposes of assessing
4 counterclaims because that issue has been resolved, but you
5 may consider such evidence for other purposes in this case.

6 And I think that would resolve the issues that we
7 have with the instruction.

8 THE COURT: Okay. Thank you, Mr. Pak.

9 Let me hear from Mr. Gillam.

10 MR. GILLAM: Your Honor, the Court has granted
11 judgment as a matter of law on this issue, first of all,
12 and whether or not this is an issue that goes up on appeal
13 or not, here's the problem that we face, and it's not only
14 with this particular instruction, but it goes to what's
15 coming next, and that's the argument in this case, and they
16 are intertwined here.

17 They spent hours, literally hours trying to paint
18 SynQor as an unethical player in this whole relationship
19 between SynQor and Vicor.

20 The conduct of SynQor in this case has nothing to
21 do with any issue now remaining before this jury, none.
22 SynQor's conduct -- SynQor's intent is not at issue in this
23 case. This evidence that they want to put in is not
24 relevant in any way to willfulness. Willfulness deals with
25 their conduct, not with the conduct of SynQor.

1 THE COURT: Well, Mr. Schmidt's argument is that
2 the evidence goes to rebut the -- SynQor's argument about
3 willfulness and the intent that Vicor had.

4 MR. GILLAM: It is all about SynQor -- sorry, Your
5 Honor, it's all about Vicor's intent. It doesn't rebut
6 anything.

7 Let's talk about the reality of what they're
8 trying to do here, and it's what they've tried to do since
9 this case began, and that is to try to make it a case of an
10 unethical behavior on the part of one party versus the
11 ethical behavior on the part of another party.

12 They shouldn't be able -- number one, the
13 instruction is correct. Number two, they shouldn't be able
14 to argue one thing about what you have now taken out of the
15 case, either expressly or by implication.

16 It doesn't rebut anything. It is their conduct
17 with -- which is at issue with respect to willfulness, not
18 the conduct of SynQor. It doesn't rebut anything. It has
19 nothing to do with rebuttal of anything.

20 You want to talk about competition between the
21 parties, that's what happened here. But they're -- what
22 they want to do now is, even though the Court has taken
23 this issue out of the case, they want to come back in and
24 say, let's argue again, we're going to spend all our time
25 talking about the conduct of SynQor, even though the Court

1 has taken the issue out of the case correctly, and that is
2 simply wrong.

3 The instruction is exactly what it ought to be in
4 this case. The Court's granted the motion, and they
5 shouldn't consider any evidence.

6 Not only that, you shouldn't hear any argument
7 with respect to this because it is not relevant to any
8 issue in this case.

9 And if the Court allows that type of argument,
10 we're right back to where we were before. We've got enough
11 of a problem already. They've already put the skunk in the
12 jury box. It's already out there, it's there. They spent
13 hours doing it.

14 Now, whether or not we can pull it back out simply
15 by not having them talk about it, that's something we're
16 just going to have to find -- that's something we're going
17 to have to find out.

18 But this instruction is correct, but I would take
19 it a step further, and they shouldn't be able to talk about
20 it either.

21 THE COURT: Okay.

22 MR. PAK: May I respond, Your Honor?

23 THE COURT: Of course.

24 MR. PAK: First of all, it is SynQor's burden to
25 prove intent for most, if not all, of the issues of

1 liability, as Your Honor is going to instruct the jury,
2 whether it's induced infringement, 27(f)(2).

3 They're also the ones alleging willful
4 infringement by Vicor. So they're saying -- they're taking
5 the same kind of evidence of competitive analysis, of
6 reverse engineering products, even suggestions that somehow
7 they were taking information relating to SynQor's products
8 and using it to compete unfairly. That is part of their
9 willfulness allegations.

10 And at a minimum, we should be allowed to put all
11 of that in context, and we would be allowed to do so.

12 But to now -- and, Your Honor, this issue did come
13 up with Judge Baxter, where we made this point to Judge
14 Baxter, that the core evidence -- and this is one of the
15 reasons why he did allow, as a recommendation, to allow the
16 counterclaims issues to be tried together, and that's why
17 we presented the evidence in a cohesive fashion.

18 It is true, Your Honor -- and as I understand
19 Your Honor's ruling on why it's not going to the jury, it's
20 purely on the damages issue with respect to the
21 Massachusetts statutory and counter -- and state law
22 claims.

23 Just because Your Honor is finding today that as a
24 matter of legal sufficiency, that damages may not have been
25 proven with enough facts doesn't discount the relevance of

1 all the rest of the evidence that shows that SynQor engaged
2 in the same, if not even more egregious, behavior with
3 respect to Vicor. They should be able to assess that in
4 the full context of their willfulness and their intent
5 claims against us.

6 And at a minimum, as Mr. Schmidt pointed out, this
7 goes to the credibility of the witnesses and the parties.
8 For SynQor to argue today, as they have done throughout the
9 case, that we somehow willfully infringe their patents,
10 that we somehow intended infringement to occur by simply
11 taking publicly available data sheets, doing publicly
12 available analysis of products, and then to try to fashion
13 an intent and willfulness claim, we should be able to say,
14 wait, SynQor itself engaged in very similar behavior and,
15 if not, took that one step further in trying to obtain
16 price lists and so on.

17 They've already heard the evidence, Your Honor.
18 We're not going to make it a focus of our closing. You'll
19 see this.

20 THE COURT: Are you going to make it any part of
21 your closing?

22 MR. PAK: With respect to the pricing and the
23 damages issues, you're going to hear very little of that.
24 What we are going to be arguing really is about the whole
25 issues in the case, and we understand Your Honor's point

1 about that.

2 But, for example, there has been other evidence
3 that is not related to the counterclaims that obviously we
4 will present as part of our closing.

5 But I do think here, this is about the jury
6 instruction, Your Honor. The jury instruction is can --
7 take the issue, the underlying issue and -- out of the
8 jury's hands because Your Honor has made a finding that
9 there's no legally-sufficient basis of damages, which is
10 the only issue here because this is to avoid the confusion.

11 We tried the case with the counterclaims in the
12 case. Your Honor needs to resolve that somehow, and I
13 think that, you know, we can work out some language, Your
14 Honor, for your proposal.

15 THE COURT: I just -- I -- okay.

16 MR. PAK: And I do think, certainly, they should
17 be instructed in some fashion that some of the evidence can
18 be considered for other purposes.

19 THE COURT: Got you.

20 MR. NELSON: So just let me clear one thing up so
21 there's no -- I'm actually doing that --

22 THE COURT: Good. I'm waiting for someone to
23 clear it up, Mr. Nelson.

24 MR. NELSON: -- that part of the closing, Your
25 Honor, and I have no intention whatsoever of mentioning

1 this Kill Vicor, the OM Associates spreadsheet, which is
2 what that evidence was focused on. I'm not going to do it.
3 It's not going to happen.

4 THE COURT: Okay. Well, that solves that.

5 My concern is, I think the jury has heard it
6 repeatedly for the last week, and, you know, we can't do
7 anything about that, but I do think that some explanation
8 is necessary so that they'll understand what the context
9 is.

10 I just think that's -- I think that goes without
11 saying. I think they have to be told something.

12 MR. PAK: Yes, Your Honor. And we have no
13 problems with that.

14 What we're saying, Your Honor, is that this
15 language -- because so much of the evidence is intertwined,
16 that I think you can make that point, Your Honor, without
17 saying that you should consider -- you should not consider
18 it for any purpose whatsoever.

19 That's just not -- we have to be able to rely on
20 providing a contextual defense against inducement and
21 willfulness allegations in this case. And we need to be
22 able to contrast their behavior and conduct, and this is --
23 to show that what they have said about willfulness and
24 intent is, in fact, inconsistent with their own behavior
25 and their own conduct. And that's the point that we're

1 making, Your Honor.

2 And so we understand that we're not asking the
3 jury to make a counterclaim finding. And as Mr. Nelson
4 said, he's not going to mention that.

5 But I do think that this instruction, as written,
6 is problematic for the reasons I stated, and we would
7 suggest some additional modifications. I do think they
8 need to hear something about it, but I just don't think
9 this instruction, from our perspective, is the right way to
10 convey what's happened.

11 THE COURT: Understood, Mr. Pak.

12 MR. PAK: Thank you.

13 THE COURT: Mr. Gillam?

14 MR. GILLAM: Your Honor, Mr. Rein is going to be
15 arguing, I'm not doing any of it. So if he wants to say
16 something, that's fine as well.

17 The problem is it's not intertwined with anything.
18 The issues before the jury now are the conduct -- the
19 allegations of willfulness, the conduct of these folks, not
20 the conduct of SynQor.

21 And what they want to try to do is exactly --
22 Mr. Pak just said it -- we want to talk about balancing the
23 conduct, we want to talk about conduct between the parties
24 and stuff. That is not the issue that's now going to be
25 before this jury at all. It's not intertwined with

1 anything.

2 They should disregard any evidence related to the
3 counterclaims. Remember what the counterclaims are, that
4 are these state law counterclaims that they filed that the
5 Court has now taken out of the case. That's the only thing
6 this evidence really goes to.

7 So if Mr. Rein wants to add something to that,
8 that's fine with me. But that's -- basically, there is no
9 intertwining between the issues. It is simply an effort to
10 try to do what they've done the whole trial, and it's to
11 throw it right back over there again and talk about it even
12 though they don't have an issue on it anymore.

13 THE COURT: Mr. Rein?

14 MR. REIN: Your Honor, it sounds like what Mr. Pak
15 wants to do is imply that Your Honor is going to resolve
16 the issue and that the state law counterclaim issue remains
17 for your resolution. That's false, and it would continue
18 to put the skunk in the jury box against our interest.

19 Secondly, Your Honor, I think they're
20 mischaracterizing what our intent argument is. Our
21 argument is that they were put on notice of our lawsuit,
22 put on notice that we were asserting a patent against 11
23 Defendants, and then they buried their head in the sand.

24 As far as responding to their arguments, we were
25 responding to their state law arguments.

1 The evidence that we put in that their products
2 were old, that was responding to their point that their
3 products are so great, so wonderful that we have to commit
4 unfair competition against them. That was the real genesis
5 of all that.

6 And so what they're basically doing is they're
7 saying, because we had to respond to their legally invalid
8 counterclaims, they should be able to do even more.

9 And respectfully, Your Honor, I think the evidence
10 that they're trying to put in remains just as prejudicial
11 today as it was back then, and that needs to be rectified.
12 They shouldn't be able to argue any further the state law
13 claims and the evidence relating thereto.

14 Thank you.

15 THE COURT: Thank you, Mr. Rein.

16 MR. PAK: I think we can just -- so Your Honor has
17 the proposal from us. If the question is about whether
18 Your Honor is going to resolve it or it's been resolved, I
19 think Your Honor can simply say the Court has resolved the
20 counterclaim issue and just leave it at that.

21 Because the reality is, it wasn't just about the
22 497 case. Dr. Dickens spent close to, by my count, 30, 40
23 minutes walking through our analysis of data sheets, our
24 reverse engineering of products in his mind, all to try to
25 establish intent and willfulness.

1 So this isn't just about intent, it's about
2 willfulness. They put all of that evidence in. We should
3 be able to say that at least in the context of those
4 claims, that SynQor's own conduct was substantially the
5 same. And that goes to the core of what we're talking
6 about.

7 So I think Your Honor can say simply that you've
8 heard some evidence relating to the counterclaims, the
9 Court has resolved that issue, and just leave it at that,
10 and I think that takes care of all the issues that I have.

11 MR. GILLAM: If I could be heard on that, Your
12 Honor, briefly.

13 THE COURT: Yes, sir.

14 MR. GILLAM: That makes it look like it could have
15 been resolved in Vicor's favor if you do it that way. What
16 it could say or what it should say is this -- number one,
17 we believe the instruction is exactly right like you've got
18 it written here.

19 But you could say: Accordingly, the Court has
20 resolved the matter in SynQor's favor on these claims.

21 If they don't like "judgment as a matter of law,"
22 you could say resolved in SynQor's favor on these claims.
23 But to not put the second part in there about disregarding
24 the evidence regarding this lets them do exactly what
25 they've been doing before, and that's talk about all this

1 mess that now has -- that shouldn't have been in there in
2 the first place but now it gives them the ability to do it
3 again.

4 THE COURT: Mr. Pak, how about resolve these
5 claims in SynQor's favor?

6 MR. PAK: That's fine, Your Honor. And I think we
7 should leave the rest of it out, because Your Honor's
8 finding isn't that we had legally insufficient basis on
9 other things, it's about the damages.

10 THE COURT: So I want you to make your record on
11 this point, Mr. Pak, because I am going to give the
12 instruction. I do think if we can use language along the
13 lines of "the issue has been resolved in SynQor's favor,"
14 that may alleviate some of your concerns.

15 I am going to instruct the jury that they should
16 disregard any evidence related to the counterclaims, and
17 I'm -- I think it is appropriate to modify that slightly to
18 say: You should, therefore, disregard any evidence solely
19 related to these counterclaims in rendering your verdict.

20 MR. PAK: We understand, Your Honor. Thank you.

21 THE COURT: And so I'll make the modification.

22 MR. PAK: And we obviously do object to that, Your
23 Honor, for the lines --

24 THE COURT: Of course.

25 MR. PAK: Yes, thank you.

1 THE COURT: Of course.

2 All right. Mr. Schmidt, you had a couple of other
3 things. Can we -- is it something that we can -- the
4 parties can agree to argue after we've done instructions
5 and closings? It's now 10:00 a.m.

6 MR. SCHMIDT: So long as that preserves the
7 record, that's fine.

8 THE COURT: Any objection to that, SynQor?

9 MR. ROGERSON: No, Your Honor. Although, there
10 are two -- just two matters we would like to raise before
11 that happens.

12 THE COURT: I need you to go to the podium,
13 Mr. Rogerson.

14 MR. ROGERSON: Your Honor, no objection to that
15 procedure from SynQor. Although, in the same spirit, there
16 are two matters we'd like to raise beforehand, if that's
17 possible.

18 THE COURT: Is it something that, again, can't be
19 resolved under the same agreement that we've just made with
20 Vicor?

21 MR. ROGERSON: Yes, Your Honor. Just two things,
22 we think, before the charge goes to the jury, we'd just
23 like to raise quickly.

24 THE COURT: Briefly.

25 MR. ROGERSON: Briefly, yes, Your Honor.

1 Number one -- sorry, could I have the copy of the
2 instructions?

3 THE COURT: Mr. Rogerson, the jury is waiting. Is
4 this really not something that we can --

5 MR. ROGERSON: I'm sorry, Your Honor, just two
6 points quickly.

7 On Page 9, I believe there's a paragraph regarding
8 the counterclaims that's been inadvertently included in the
9 instructions.

10 THE COURT: Ah, you're right. Thank you. That
11 needed to be resolved.

12 MR. ROGERSON: Yes, Your Honor. Thank you.

13 And then Matter No. 2 is on Page 19. This is the
14 271(f)(2) instruction, we believe, as written, it doesn't
15 contain a willful blindness element, and we think that's an
16 important and substantial issue. And so at least to
17 Element 4, willful blindness should be added.

18 THE COURT: Yes. Thank you, Mr. Rogerson.

19 MR. PAK: Your Honor, we did -- our understanding
20 of the law, Your Honor, is that we do need to at least
21 state the objections briefly before the jury instructions
22 are read. So Mr. Schmidt is going to make that record for
23 us --

24 THE COURT: That's fine.

25 MR. PAK: Thank you.

1 MR. SCHMIDT: So the objections, Your Honor, are
2 on Page 18, 19, and 20 of the jury instructions.

3 The mention of Vicor not relying on advice of
4 counsel in relation to the contributory inducement and
5 willfulness claim, Vicor objects to that mention.

6 And then --

7 THE COURT: Can you cite me to a particular page
8 and paragraph?

9 MR. SCHMIDT: Yes, Your Honor. At the very top of
10 Page 18, relating to the inducement instruction, there's
11 some language stating that the jury should consider the
12 totality of the circumstances, including Vicor's -- I'm
13 paraphrasing here, but Vicor's not obtaining the advice of
14 counsel opinion.

15 I mean, we object to any mention of advice of
16 counsel as part of the totality of circumstances in the
17 context of inducement, contributory and willfulness.

18 And then on Page 19 for the 271(f)(2) instruction,
19 we would propose some clarifying language to the intent and
20 knowledge requirements that would make clear that the
21 knowledge and intent that's required is knowledge and
22 intent to actually cause the product to infringe.

23 And like I said, our objections are stated more
24 fulsome in our underlying briefing.

25 THE COURT: Thank you, Mr. Schmidt.

1 MR. SCHMIDT: Thank you, Your Honor.

2 MS. HAUSMAN: And, Your Honor, the parties agree
3 that we believe it's necessary to read in the remaining
4 exhibits for Monday, if I can do that.

5 THE COURT: Okay.

6 MS. HAUSMAN: Those exhibits are: DTX-0275,
7 DTX-0426, DTX-0433, DTX-0465, DTX-0467, DTX-0472, DTX-0480,
8 DTX-030 (sic), DTX-0632, DTX-0634, DTX-0660, DTX-0661,
9 DTX-0860, DTX-0861, DTX-1314, DTX-1443, DTX-1444, DTX-1458,
10 PTX-1520, PTX-1496, and PTX-1499.

11 THE COURT: Thank you.

12 MR. HATCHER: And, Your Honor --

13 THE COURT: Mr. Hatcher, would you go to the
14 podium, please, sir?

15 MR. HATCHER: Yeah, Your Honor. My apologies.

16 THE COURT: No, thank you.

17 MR. HATCHER: One correction. I think it's
18 DTX-0630. At one point, that was said incorrectly.

19 Other than that, we agree, Your Honor.

20 THE COURT: Okay. Ms. Hausman, is that right?

21 MS. HAUSMAN: That is an exhibit.

22 THE COURT: Okay. Thank you, Mr. Hatcher.

23 MR. ROGERSON: I'll be extremely brief, Your
24 Honor.

25 Objections for SynQor on Page -- on Page 17,

1 Element 3, SynQor objects to the language "took deliberate
2 steps to avoid learning of that infringement."

3 And SynQor would propose as an alternative
4 instruction the language "deliberately avoided confirming
5 that belief."

6 Next, Your Honor, on Page 18, SynQor would make
7 the same objection to the same language, "took deliberate
8 actions to avoid learning of the infringement," and propose
9 the same alternative language.

10 On Page 31, Your Honor, SynQor objects to the
11 reasonable royalty license comparability instruction.
12 SynQor believes those instructions are not necessary in
13 this case.

14 On the same page, SynQor objects to the reasonable
15 royalty apportionment instruction and believes that the
16 first sentence of that instruction is adequate.

17 And one last objection, Your Honor, on Page 14,
18 SynQor objects to the sentence: "The comparison of the
19 accused products to SynQor products or to Vicor patents
20 may, however, be relevant to issues concerning Vicor's
21 intent to infringe."

22 SynQor believes that sentence is not an accurate
23 statement of law.

24 Thank you, Your Honor.

25 THE COURT: Could I ask you to go back to Page 19?

1 You mentioned --

2 MR. ROGERSON: Yes, Your Honor.

3 THE COURT: -- on the 271(f)(2) instruction that
4 there's not an element on willful blindness. What's your
5 authority? Can you cite me, what's your support for that?
6 Factor 4?

7 MR. ROGERSON: Yes, Your Honor. Sorry, one
8 moment.

9 Yes, Your Honor. So if you look in our
10 Footnote 37, and in particular the second paragraph of that
11 footnote, we cite a number of cases with prior jury
12 instructions, and I believe if you look at those case,
13 you'll find the elements are similar to the ones that we've
14 proposed. In each of those cases, a similar instruction
15 was given.

16 THE COURT: Okay. All right. Mr. Schmidt, you
17 want to say anything about that?

18 MR. SCHMIDT: I don't know if this would resolve
19 the issue, Your Honor, but there's some language at the
20 very end of the inducement and the contributory
21 infringement sections that talk about measuring Vicor's
22 culpability against its knowledge and intent at the time.

23 And then there's a whole paragraph that goes on
24 from there. I think if we could include an analogous
25 paragraph at the end of the 271(f)(2) section, then that

1 might address the issue that SynQor has, and it would also
2 go partially towards addressing the objection that I stated
3 previously.

4 THE COURT: Mr. Rogerson?

5 MR. ROGERSON: Your Honor, I think our challenge
6 there is that for the other two infringement instructions,
7 both inducement and contributory, willful blindness is
8 included in the listed element instructions as part of
9 Vicor's knowledge. (f)(2) has the same knowledge element,
10 but it doesn't include that instruction.

11 THE COURT: Well, that --

12 MR. ROGERSON: We think that's appropriate.

13 THE COURT: That language is actually not in the
14 statute, is it?

15 MR. ROGERSON: Willful blindness I think isn't in
16 any of the statutes, Your Honor.

17 THE COURT: And so in the cases, I'm not -- I
18 don't know which cases you cited, if it was Lone Star or
19 the Papst case or which cases were cited in that footnote
20 that you've referred me to, but I just -- the parties may
21 have agreed to it, I'm just -- I'm concerned about adding
22 that.

23 MR. ROGERSON: Yeah, I think our concern, Your
24 Honor, is that the willful blindness standard comes from a
25 recent Supreme Court decisions on knowledge and intent, and

1 it's, you know, standardly given in these instructions.

2 It appears in the elements of both (b) and (c),
3 and our concern is that -- if it's not given in this
4 instruction, that's an important issue.

5 You know, and it was actually in both parties'
6 instructions, the entire time, in September, in our Sunday
7 submission, and then I think this was Vicor's submission
8 last night at around 8:00 p.m. for the first time ever took
9 it out, and our concern is if it stays out and goes to the
10 jury.

11 THE COURT: Okay. And just to be clear,
12 Mr. Schmidt, does Vicor oppose including that language that
13 Mr. Rogerson has requested?

14 MR. SCHMIDT: Can I hear the specific language and
15 where it would be placed?

16 MR. ROGERSON: Yes, I think just roughly what we
17 would have in mind would be -- so we're on Page 19,
18 Element 4: Vicor knew the component was made or adapted
19 for use in a product that would directly infringe the
20 SynQor patents if it were used in the United States or
21 believed there is a high probability that the component was
22 made or adapted for use in a product that would directly
23 infringe the SynQor patents if it were used in the United
24 States -- and, here, I'm just using the language your Court
25 has already selected for the other instructions to which

1 SynQor has objected -- and took deliberate actions to avoid
2 learning of the infringement.

3 THE COURT: Is that okay with --

4 MR. SCHMIDT: We object to that, Your Honor. It's
5 not in the statute.

6 THE COURT: You do object to that? Okay.

7 All right. Anything else, Mr. Rogerson?

8 MR. ROGERSON: Just to preserve our record on that
9 issue, we also prefer the language we had previously
10 suggested, which we can provide more fulsomely, but we want
11 to focus on that issue.

12 Thank you, Your Honor.

13 THE COURT: Thank you.

14 Okay. Anything else?

15 We'll take a short recess. I want to do a little
16 work on the instruction related to the counterclaim issue.
17 We'll make the change as indicated where the paragraph on
18 the counterclaims was inadvertently left in. And as soon
19 as we do that, we will be back and go on the record with
20 the jury.

21 All right. Thank you all.

22 MR. PAK: Thank you.

23 (Recess.)

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: All right. Please be seated.

1 All right. We have completed work on the
2 instructions. We're giving each side a copy now. We're
3 making additional copies as we speak.

4 We'll go ahead and begin with the jury, and as the
5 additional copies are made, we'll bring those in and pass
6 those out so that you'll have multiple copies at your
7 table.

8 Anything before we have the jury brought up?

9 MR. PAK: Not for the Defendants, Your Honor.

10 MR. GILLAM: No, Your Honor.

11 THE COURT: If you would, have the jury brought
12 up, Mr. Latham.

13 COURT SECURITY OFFICER: All rise.

14 (Jury in.)

15 THE COURT: Please be seated.

16 Good morning, ladies and gentlemen. And welcome
17 back. I think fall has finally arrived. I hope you
18 enjoyed your early afternoon yesterday.

19 I apologize for the little bit of the late start
20 we're getting this morning. There are always last-minute
21 issues that I have to resolve with the attorneys outside
22 your presence, and we've been hard at it here in the
23 courtroom, but it just took a little longer than I think
24 certainly I expected.

25 As you know, what remains to be done at this point

1 are the instructions I'm now about to give you on the law
2 that you must follow in your deliberations on your verdict,
3 and then we'll take a short recess.

4 And, actually, depending on what time it is, we
5 probably will have you all go ahead and eat lunch, and once
6 you've finished that, we'll come back and do closing
7 arguments.

8 I'm going to go through the instructions with you
9 now. It will take a little bit of time. You all are free
10 to take notes as I go through the instructions if you wish
11 to do so.

12 But I want you to understand that each of you will
13 have a copy of the instructions for your own use when you
14 get back to the jury room. So feel free to take whatever
15 notes you want, but you'll -- each of you will have your
16 own copy when deliberations begin.

17 Members of the jury, you've heard the evidence in
18 this case. The parties were given limited time in which to
19 present their cases, and each side received the same amount
20 of time to present their evidence.

21 I am now going to instruct you on the law that you
22 must apply.

23 Each of you, as I said, will have your own
24 personal copy of the final instructions that I am giving
25 you now orally.

1 It's your duty to follow the law as I give it to
2 you. You should not single out any instruction as alone
3 stating the law, but you should consider my instructions as
4 a whole when you retire to deliberate.

5 On the other hand, you, the jury, are the judges
6 of the facts. Do not consider any statement that I have
7 made in the course of the trial or make in these
8 instructions as an indication that I have any opinion about
9 the facts of the case.

10 After I instruct you, the attorneys will present
11 their closing arguments. And as a reminder, as I told you
12 at the beginning of the case, the statements and the
13 arguments made by the attorneys are not evidence and are
14 not instructions on the law. They are intended only to
15 assist the jury in understanding the evidence and the
16 contentions of the parties.

17 At the beginning of the trial, I gave you some
18 general instructions and definitions, and I'm now going to
19 repeat those to aid you in your deliberations.

20 A verdict form has been prepared for you, and you
21 will take the form with you to the jury room. And when you
22 have reached a unanimous agreement as to your verdict, the
23 foreperson of the jury will fill in, date, and sign the
24 form.

25 You should answer the question on the verdict form

1 from the facts as you find them. You should not decide who
2 you think should win and then answer the questions
3 accordingly.

4 Your answer and your verdict must be unanimous.

5 Facts must be proved by a required standard of the
6 evidence that's known as the burden of proof. And in this
7 case, there are two burdens of proof that apply,
8 preponderance of the evidence and clear and convincing.

9 When a party has the burden of proof on any claim
10 or defense by a preponderance of the evidence, it means
11 that you must be persuaded by the evidence that the claim
12 or affirmative defense is more likely true than not true.
13 And you should base your decision on all of the evidence,
14 regardless of which party presented it.

15 When a party has the burden of proof on any claim
16 or defense by clear and convincing evidence, that means
17 that the evidence must persuade you that it is highly
18 probable that the facts are as the party contends. In
19 other words, clear and convincing evidence means that the
20 evidence produced is in your mind a firm belief or
21 conviction as to the matter at issue.

22 The clear and convincing evidence standard
23 requires greater proof than is necessary for the
24 preponderance of the evidence standard.

25 Again, you should base your evidence -- your

1 decision on all of the evidence, regardless of which party
2 presented it.

3 The evidence you are to consider includes: The
4 sworn testimony of any witness; the exhibits received into
5 evidence; and any facts that the parties have stipulated
6 to, which I will go over with you in just a moment.

7 The following items are not evidence, and you
8 should not consider them as evidence in deciding the facts
9 of the case: The statements and the arguments of the
10 attorneys; questions or objections by the attorneys; any
11 testimony that I've instructed you to disregard; and
12 anything that you may see or hear when the Court's not in
13 session, even if what you see or hear is done or said by
14 one of the parties or by one of the witnesses.

15 While you should consider only the evidence in the
16 case, you are permitted to draw such reasonable inferences
17 from the testimony and exhibits as you feel are justified
18 in light of common experience.

19 In other words, you may make deductions and reach
20 conclusions that reason and common sense lead you to draw
21 from the facts that have been established by the testimony
22 and evidence in the case.

23 The testimony of a single witness may be
24 sufficient to prove any fact, even if a greater number of
25 witnesses may have testified to the contrary, if after

1 considering all of the evidence, you believe that single
2 witness.

3 There are two types of evidence that you may
4 consider in properly finding the truth as to the facts in
5 this case. One is direct evidence, such as the testimony
6 of an eyewitness; the other is indirect or circumstantial
7 evidence, which is the proof of a chain of circumstances
8 that indicates the existence or nonexistence of certain
9 other facts.

10 As a general rule, the law makes no distinction
11 between direct and circumstantial evidence but simply
12 requires that you find the facts from all of the evidence,
13 both direct and circumstantial, regardless of the burden of
14 proof involved.

15 Do not let bias, prejudice, or sympathy play any
16 part in your deliberations. A corporation and all other
17 persons are equal before the law and must be treated as
18 equals in a court of justice.

19 The Court has assigned numbers to the trial
20 exhibits, and you should not construe any significance to
21 those exhibit numbers. Certain exhibits have been shown to
22 you as illustrations, and we call these types of exhibits
23 "demonstrative exhibits."

24 Demonstrative exhibits are a party's description
25 or picture or model to describe something that's involved

1 in the trial. If your recollection of the evidence differs
2 from the exhibit, you should rely on your recollection.

3 While demonstrative exhibits may have been helpful
4 to you in determining the issues, the demonstrative
5 exhibits of both parties are not evidence or proof of any
6 facts. And if they do not correctly reflect the evidence
7 in the case, you should disregard these demonstrative
8 exhibits and determine the facts from the underlying
9 evidence.

10 Demonstrative exhibits not admitted into evidence
11 will not be available to you during your deliberations.

12 You are the sole judges of the credibility or
13 believability of each witness and the weight to be given to
14 each witness's testimony.

15 An important part of your job will be making
16 judgments about the testimony of the witnesses. You should
17 decide whether you believe all or any part of what each
18 person had to say and how important that testimony was.

19 In weighing the testimony of the witnesses, you
20 may consider the witness's manner and demeanor on the
21 witness stand, any feelings or interests they may have had
22 in the case, or any prejudice or bias about the case that
23 he or she may have had, and the consistency or
24 inconsistency of his or her testimony when considered in
25 the light of the circumstances.

1 Has the witness been contradicted by other
2 credible evidence? Has he or she made statements at other
3 times and places contrary to those made here on the witness
4 stand?

5 You must give the testimony of each witness the
6 credibility that you think it deserves. Even though a
7 witness may be a party to the action and, therefore,
8 interested in the outcome, the testimony may be accepted if
9 it is not un -- if it is not contradicted by direct
10 evidence or by any inference that may be drawn from the
11 evidence if you believe that testimony.

12 In making up your mind and reaching your verdict,
13 do not make any decisions simply because there were more
14 witnesses on one side than the other.

15 Do not reach a conclusion on a particular point
16 just because there were more witnesses testifying for one
17 side on that point.

18 In determining the weight to give to the testimony
19 of your witness, you should ask yourself whether there was
20 evidence tending to prove that the witness testified
21 falsely about some important fact, or, whether there was
22 evidence that at some other time, the witness said or did
23 something or failed to say or do something that was
24 different from the testimony that he or she gave at trial.

25 You should keep in mind, of course, that a simple

1 mistake by a witness does not necessarily mean that the
2 witness was not telling the truth as he or she remembers
3 it, because people may forget some things or remember other
4 things inaccurately.

5 So if a witness has made a misstatement, you need
6 to consider whether that misstatement was an intentional
7 falsehood or simply an innocent lapse of memory, and the
8 significance of that may depend on whether it has to do
9 with an important fact or with only an unimportant detail.

10 When technical or other specialized knowledge may
11 be helpful to the jury, a person who has special training
12 or experience in that field, called an expert witness, is
13 permitted to state his or her opinion on those matters.
14 However, you're not required to accept that opinion. As
15 with any other witness, it's up for -- it is up to you to
16 decide whether to rely upon an expert's opinion.

17 Certain testimony was presented to you in the form
18 of a deposition, and a deposition is the sworn, recorded
19 answers to questions that were asked of a witness in
20 advance of the trial.

21 Under certain circumstances, if a witness cannot
22 be present to testify from the witness stand or the parties
23 agree otherwise, those witnesses' testimony may be
24 presented under oath in the form of depositions.

25 And some time before this trial, the attorneys

1 questioned the witness -- witnesses under oath. A court
2 reporter was present and recorded the testimony.

3 This deposition testimony is entitled to the same
4 consideration and is to be judged by you as to the
5 credibility and weighed and otherwise considered by you
6 insofar as possible in the same way as if the witness had
7 been present here and testifying from the witness stand in
8 court.

9 It's the duty of the attorneys on each side of the
10 case to object when the other side offers testimony or
11 other evidence that the attorney believes is not properly
12 admissible.

13 Upon allowing testimony or other evidence to be
14 admitted over the objection of an attorney, I do not and
15 did not, unless expressly stated, indicate any opinion as
16 to the weight or the effect of such evidence.

17 As I've said before, the jurors are the sole
18 judges of the credibility of all the witnesses and the
19 weight and the effect of all of the evidence.

20 When the Court sustained an objection to a
21 question that was addressed to a witness, the jury must
22 disregard the question entirely and may draw no inference
23 from the wording of it or speculate as to what the witness
24 would have said if permitted to answer the question.

25 If the objection was overruled, you may treat the

1 answer to that question just as you would treat the answer
2 to any other question.

3 During the trial, I may not have let you hear the
4 answers to some of the questions that the lawyers asked, I
5 also may have ruled that you cannot see some of the
6 exhibits that the lawyers wanted you to see. And sometimes
7 I may have just ordered you to disregard things that you
8 saw or heard.

9 You must completely ignore all of these things as
10 I've instructed you to disregard or to ignore. Do not
11 speculate about what a witness might have said or what an
12 exhibit might have shown. These things are not evidence,
13 and you are bound by your oath not to let them influence
14 your decision in any way.

15 At times during the trial, it was necessary for
16 the Court to talk with the lawyers here at the bench
17 outside of your hearing or by calling a recess and talking
18 to them when you were out of the room.

19 This happened because often during a trial,
20 something comes up that does not involve the jury, and you
21 should not speculate on what was said during such
22 discussions that took place outside of your presence.

23 Any notes that you all may have taken during the
24 trial are only aids to your memory. If your memory should
25 differ from your notes, you should rely on your memory and

1 not on the notes. Your notes are not evidence. And a
2 juror who has taken no notes should rely on his or her own
3 independent recollection of the evidence and should not be
4 unduly influenced by the notes of other jurors.

5 Notes are not entitled to any greater weight than
6 the recollection or impression of each juror about the
7 testimony.

8 At the beginning of the trial, I gave you some
9 specific -- at the beginning of the trial, I gave you some
10 general information about patents and the patent system and
11 a brief overview of the patent laws that are relevant to
12 this case.

13 I will now briefly review the contentions of the
14 parties' and give you more detailed instructions about the
15 patent laws that specifically relate to this case.

16 The Plaintiff in this case is SynQor,
17 incorporated, referred to as the "Plaintiff" or "SynQor."

18 The Defendant in the case is Vicor Corporation,
19 referred to as the "Defendant" or "Vicor."

20 SynQor alleges that Vicor induces and contributes
21 to the infringement of certain claims of two SynQor
22 patents, United States Patent No. 7,072,190, which is often
23 referred to as the '190 patent, and United States No. --
24 Patent No. 7,564,702, which is often referred to as the
25 '702 patent.

1 I will refer to these two patents together as the
2 "SynQor patents," the "asserted patents," or the
3 "patents-in-suit."

4 SynQor specifically contends that Vicor induces
5 and contributes to the infringement of Claim 2 of the '190
6 patent and Claims 55 and 67 of the '702 patent. And I will
7 refer to these claims together as the asserted claims.

8 SynQor alleges that the asserted claims are
9 infringed either literally or through the Doctrine of
10 Equivalents.

11 SynQor alleges that Vicor induces and contributes
12 to the infringement of the asserted claims of the SynQor
13 patents by making, using, offering for sale, and/or selling
14 in the United States unregulated bus converters that its
15 customers use in the claimed invention.

16 More specifically, SynQor alleges that Vicor
17 induces and contributes to infringement of the asserted
18 claims of the SynQor patents by certain of its customers.
19 SynQor alleges that Vicor is liable for the sale of its bus
20 converters, both inside and outside the United States.

21 SynQor alleges that Vicor's infringement has been
22 willful. SynQor seeks damages in the form of a reasonable
23 royalty to compensate it for the alleged infringement.

24 Vicor denies SynQor's assertions of infringement.
25 Vicor contends that it has not induced or contributed to

1 the infringement of the SynQor patents by supplying bus
2 converters to its customers. Vicor denies that its bus
3 converters satisfy one or more elements of the asserted
4 claims. Vicor further denies that it has intentionally
5 induced infringement of the asserted claims of the
6 patents-in-suit. Vicor also denies that it has
7 intentionally contributed to infringement of the asserted
8 claims of the patents-in-suit. Vicor further denies that
9 SynQor is entitled to any damages.

10 Vicor further alleges that the asserted claim of
11 the '190 patent is invalid because it is anticipated by the
12 prior art and/or because it would have been obvious to a
13 person of ordinary skill in the field as of January 24,
14 1997.

15 Vicor does not, however, contend that the asserted
16 claims of the '702 patent are invalid.

17 Your job will be to decide whether the asserted
18 claims of the SynQor patents have been infringed and
19 whether the asserted claim of the '190 patent is invalid.

20 If you decide that the asserted claims of the '702
21 patent are not infringed, and that the asserted claim of
22 the '190 patent is either not infringed or invalid, then
23 you do not need to consider damages.

24 If you decide that any asserted claim of the '702
25 patent was infringed or that the asserted claim of the '190

1 is infringed and is not invalid, you will then need to
2 decide the money damages to be awarded to SynQor to
3 compensate it for the infringement, if any.

4 Now, before the trial started, the parties
5 stipulated or agreed that certain facts are true. These
6 facts are as follows:

7 No. 1, subject matter jurisdiction is proper in
8 this Court.

9 No. 2, the parties don't contest that the Court
10 has personal jurisdiction over the parties for purposes of
11 this litigation.

12 No. 3, the parties agree that venue is proper for
13 this litigation in the United States District Court for the
14 Eastern District of Texas, Marshall Division.

15 No. 4, SynQor owns the two patents-in-suit, the
16 '190 patent and the '702 patent. Trial exhibits, PTX-1 and
17 PTX-4 are accurate copies of the patents-in-suit.

18 No. 5, SynQor previously sued 11 of its
19 competitors for infringing, among others, its '190 and '702
20 patents. The parties have referred to this previous case
21 as SynQor I or the 497 case.

22 The previous case -- No. 6, the previous case went
23 to trial in December 2010 here in Marshall.

24 No. 7, the SynQor's competitors in the 497 case
25 supplied parts to Vicor's customers, Cisco and Juniper, for

1 use in some of the same Cisco and Juniper products for
2 which Vicor supplies parts, and such parts -- such products
3 are now at issue in this case.

4 No. 8, in the 497 case, the jury found that the
5 Defendants each infringed certain claims of the five Cisqor
6 (sic) patents that were asserted in that case by selling
7 bus converters to their customers, including Cisco and
8 Juniper.

9 No. 9, two of the five asserted patents include
10 the '190 and the '702 patents, which are also asserted in
11 this case. And Claim 2 of the '190 patent was specifically
12 asserted in the 497 case as were claims dependent on Claim
13 55 of the '702 patent.

14 No. 10, the jury awarded SynQor damages and lost
15 profits, and the Court entered a permanent injunction.

16 No. 11, all of Vicor's accused bus converters are
17 manufactured in the United States.

18 No. 12, SynQor and Vicor stipulated for purposes
19 of this case as to the public availability of certain prior
20 art references.

21 No. 13, Pressman, Switching and Linear Power
22 Supply, Power Converter Design, published by Hayden Book
23 Company, Incorporated, in 1977 was publicly available prior
24 to January 23rd 1996.

25 No. 14, U.S. Patent No. 5,377,090, the Steigerwald

1 '090 patent, has a priority date of January 19th, 1993.

2 No. 15, U.S. Patent No. 5,274,539, the Steigerwald
3 '539 patent, has a priority date of December 4, 1991.

4 No. 16, the joint stipulation regarding
5 representative products, PTX-2590 and DTX-1444.

6 No. 17, the joint stipulation regarding undisputed
7 issues pertain -- pertaining to accused Vicor bus
8 converters, PTX-2591 and DTX-1445.

9 And, finally, 18, the joint stipulation regarding
10 undisputed claim limitations met by accused products and
11 claim limitations disclosed in the prior art, PTX-2592 and
12 DTX-1446.

13 Before you can decide many of the issues in this
14 case, including infringement and invalidity, you will need
15 to understand the role of patent claims. The claims of a
16 patent are the numbered sentences at the end of the patent.

17 The SynQor patents are in your notebooks, and the
18 claims describe the invention as what the patent owner owns
19 and what the patent owner may prevent others from doing.

20 The figures and the text in the rest of the patent
21 provides a description and examples of the invention and
22 provide a context for the claims, but the claims define how
23 broad or narrow a patent's coverage is.

24 Each claim is effectively treated as if it were a
25 separate patent, and each claim may cover more or less than

1 another claim. Therefore, what a patent covers depends on
2 what each of its claims cover.

3 Claims are usually divided into parts or steps
4 that are called "limitations" or "requirements" or
5 "elements."

6 For example, a claim that covers the invention of
7 a table may recite the tabletop, four legs, and the glue
8 that secures the legs to the tabletop.

9 In this example, the tabletop, four legs, and glue
10 are each a separate limitation of the claim, and the claims
11 at issue here are product claims.

12 In deciding whether an accused product infringes a
13 patent claim or whether a claim is invalid, the first step
14 is to understand the meaning of the words used in the
15 claims, and the meaning of the words in the claims is the
16 same for both the infringement and the invalidity
17 determinations.

18 But the standard of proof is different because the
19 clear and convincing standard for invalidity requires
20 greater proof than is necessary for the preponderance of
21 the evidence standard that applies to infringement.

22 It's my job as the judge to determine what the
23 claims mean and to instruct you about that meaning. You
24 must accept the meanings I give you and use those meanings
25 when you decide whether each claim is infringed and whether

1 each claim is invalid.

2 I've interpreted the meaning of some of the
3 language involved in the case, and my interpretation of
4 those claims appears in your juror notebooks and also in
5 Appendix A to these instructions.

6 The claim language that I have not interpreted for
7 you is to be given its ordinary and accustomed meaning as
8 understood by one of ordinary skill in the field of the
9 invention. And I will instruct you on what a person of
10 ordinary skill in the art is in more detail shortly.

11 The beginning, or the preamble, of all of the
12 asserted claims of the SynQor patents use the word
13 "comprising," and "comprising" means "including" or
14 "containing but not limited to."

15 Thus, if you decide that an accused product
16 includes all of the requirements, also called limitations
17 or elements, in the claim, then that claim is infringed.
18 And this is true even if the accused products -- product
19 includes components in addition to those requirements.

20 For example, a claim to the table comprising a
21 tabletop, legs, and glue would be infringed by a table --
22 by a table that includes a tabletop, legs, and glue, even
23 if the table also includes wheels on the table's legs.

24 Now, patent claims may exist in two forms referred
25 to as independent claims or dependent claims. An

1 independent claim sets forth all of the requirements that
2 must be met in order to be covered by the claim and does
3 not refer to any other claim of the -- a patent. Thus,
4 it's not necessary to look at any other claim to determine
5 whether -- or what an independent claim covers.

6 For example, Claim 55 of the '702 patent is an
7 independent claim.

8 A dependent claim does not itself recite all the
9 requirements of the claim but refers to at least one other
10 claim in the patent for some of its requirements.

11 A dependent claim includes all the requirements of
12 the other claim to which it refers, as well as the
13 requirements recited in the dependent claim.

14 In this way, the claim depends on another claim.
15 And to determine what an independent -- what a dependent
16 claim covers, it's necessary to look both at the dependent
17 claim and the other claim or claims to which it refers.

18 For example, Claim 2 of the '190 patent is a
19 dependent claim, and it includes its requirements plus the
20 requirements of Claim 1 from which it depends.

21 And Claim 67 of the '702 patent is also a
22 dependent claim. It includes the requirements of Claim 55
23 along with the additional requirements of Claim 67.

24 Several times in these instructions I will refer
25 to a person of ordinary skill in the art or a person of

1 ordinary skill in the field of the invention.

2 It is up to you to decide the level of ordinary
3 skill in the field of the invention. Someone with ordinary
4 skill in the art is presumed to know all of the pertinent
5 prior art, not just what an inventor may have known.

6 And you should consider all of the evidence
7 introduced at trial in making this decision, including:

8 The level of education and experience of persons
9 working in the field;

10 The types of problems that are encountered in the
11 field;

12 And the sophistication of the technology.

13 A glossary of general patent terms is contained in
14 Appendix B of these instructions.

15 I will now instruct you as to the rules you must
16 follow in deciding whether SynQor has proven that Vicor
17 induced or contributed to the infringement of any of the
18 asserted claims of the asserted patents.

19 Remember that SynQor bears the burden of proving
20 by a preponderance of the evidence that Vicor infringes
21 each of the asserted claims by actively inducing customers
22 to infringe and/or knowingly contributing to their
23 infringement.

24 In other words, SynQor must prove that it is more
25 likely than not that Vicor induced or contributed to the

1 infringement of each of the asserted claims of the asserted
2 patents.

3 It is your job to determine, as to each of the
4 asserted claims, whether SynQor has proven by a
5 preponderance of the evidence that Vicor has separately
6 infringed each of those claims.

7 Infringement is assessed on a claim-by-claim
8 basis, therefore, there may be infringement as to one claim
9 but not infringement as to another.

10 In determining whether an accused product meets
11 the limitations of the claims, you should compare the
12 accused product to the asserted claims and not to any
13 SynQor product.

14 The comparison of the accused products to SynQor
15 products or to Vicor products -- patents may, however, be
16 relevant to issues concerning Vicor's intent to infringe.

17 During the trial, you heard reference to patents
18 that Vicor has received. A product may be covered by more
19 than one patent, but the existence of an accused
20 infringer's own patent does not constitute a defense to
21 infringement of someone else's patent, even if the product
22 is covered by the accused infringer's patent.

23 Once the patent is issued, the owner of the patent
24 has the right to exclude others from making, using,
25 offering to sell, or selling the patented invention

1 throughout the United States or importing the patented
2 invention into the United States for a term of 20 years.

3 Infringement occurs when a person without the
4 patent owner's permission makes, uses, offers to sell, or
5 sells the patented invention anywhere in the United States
6 or imports the patented invention into the United States
7 while the patent is in force.

8 Vicor is accused of induced infringement,
9 contributory infringement, and infringement through the
10 supply of components from the United States for combination
11 abroad. SynQor also alleges that Vicor is liable for
12 willful infringement. Inducement and contributory
13 infringement are referred to as indirect infringement.

14 To prove indirect infringement, SynQor must prove
15 that Vicor's indirect infringement caused direct
16 infringement by one or more of its customers. Direct
17 infringement can be found either literally or under the
18 Doctrine of Equivalents.

19 Let me start by explaining direct infringement in
20 a little more detail.

21 To show direct infringement of a claim, SynQor
22 must prove by a preponderance of the evidence that the
23 customers' products include every requirement in that
24 claim, literally or equivalently, and as I will explain to
25 you shortly.

1 In order to prove direct infringement, SynQor must
2 prove by a preponderance of the evidence, that is, it's
3 more likely than not, that the alleged infringer made,
4 used, sold, offered for sale within the United States, or
5 imported into the United States a product that meets all of
6 the requirements of a claim.

7 You must compare the accused product with each and
8 every one of the requirements of a claim to determine
9 whether all of the requirements are met. You must
10 determine separately for each asserted claim whether or not
11 there is infringement.

12 A claim requirement is literally present if it
13 exists in the accused product just as it is described in
14 the claim language, either as I've explained the language
15 to you, or if I did not explain it, as it would be
16 understood by one of ordinary skill in the art.

17 If an accused product omits a claim requirement,
18 then you must find that the claim is not literally
19 infringed as to that product.

20 You must consider each asserted claim of the
21 SynQor patents separately. If you find that each and every
22 element of the claim is present, then the claim is
23 infringed, even if the accused product may be more or less
24 efficient or may include an additional feature or functions
25 that are not found in the claims.

1 Whether Vicor's customer knew that its product
2 infringed does not matter for your consideration of direct
3 infringement. The customer may directly infringe a patent
4 even if it believed in good faith that what it was doing
5 was not an infringement of any patent and even if it did
6 not know about the patent.

7 If a company makes, uses, sells, offers to sell
8 within, or imports into the United States a product that
9 does not meet all the requirements of a claim and thus does
10 not literally infringe the claim, there can still be direct
11 infringement if that product satisfies the claim under the
12 Doctrine of Equivalents.

13 Under the Doctrine of Equivalents, a product
14 infringes the claim if the accused product contains
15 elements corresponding to each and every requirement of the
16 claim that it is equivalent to, even though not literally
17 met by the accused product.

18 You may find that an element is equivalent to a
19 requirement of a claim that is not met literally if a
20 person having ordinary skill in the technology of the
21 patent would have considered the differences between them
22 to be insubstantial or would have found that the structure,
23 number one, performs substantially the same function, and,
24 number two, works in substantially the same way, and,
25 number three, to achieve substantially the same result as

1 the requirement of the claim.

2 In order to prove infringement by equivalents,
3 SynQor must prove the equivalency of the structure to a
4 claim element by a preponderance of the evidence.

5 SynQor alleges that Vicor is liable for
6 infringement by inducing others to directly infringe the
7 asserted claims of the SynQor patents.

8 The law provides -- the patent laws provide that
9 one who actively induces infringement of a patent shall be
10 liable as an infringer.

11 As with direct infringement, you must determine
12 whether there has been inducement or induced infringement
13 on a claim-by-claim basis.

14 Vicor is liable for induced infringement of a
15 claim of one of the asserted patents only if SynQor proves
16 by a preponderance of the evidence that:

17 One, the acts are actually carried out by another,
18 such as Vicor's customers, and that the other directly
19 infringes that claim within the United States;

20 Number two, that Vicor took action during the time
21 the patent was in force intending to cause the infringing
22 acts by another; and

23 Number three, that Vicor was aware of the patent
24 and knew that the acts, if taken, would constitute
25 infringement of that patent, or that Vicor believed there

1 was a high probability that the actions taken by others
2 infringed the patent-in-suit and took deliberate steps to
3 avoid learning of that infringement.

4 The mere knowledge of possible infringement by
5 others does not amount to inducement. Rather, SynQor must
6 prove that Vicor acted with specific intent to cause acts
7 that constitute direct infringement and must have known
8 that its actions would cause the direct infringement or
9 believe that there was a high probability that its actions
10 would cause the direct infringement but deliberately
11 avoided confirming that belief.

12 Vicor's culpability is measured against its
13 knowledge and intent at the time of its conduct. When
14 considering whether Vicor knew or was willfully blind to a
15 high probability that the induced actions would constitute
16 infringement, you should consider the totality of the
17 circumstances, including whether Vicor is relying on the
18 advice of a competent lawyer.

19 SynQor contends that Vicor is liable for
20 contributory infringement by contributing to the direct
21 infringement of the SynQor patents by certain customers of
22 Vicor.

23 As with direct infringement, you must determine
24 contributory infringement on a claim-by-claim basis.

25 Vicor is liable for contributory infringement of a

1 claim if SynQor proves by a preponderance of the evidence
2 that:

3 One, Vicor sold to a customer within the United
4 States, offered to sell within the United States, or
5 imported into the United States a component of a patented
6 product during the time the patents were in force;

7 Two, that the component had no substantial
8 non-infringing use;

9 Three, that the component constituted a material
10 part of the invention;

11 Four, that Vicor was aware of the SynQor patents
12 and knew that the product for which the component had no
13 substantial non-infringing use was covered by a claim of
14 the patents or believed that there was a high probability
15 that the product for which the component had no substantial
16 non-infringing use was covered by a claim of the patents
17 and took deliberate actions to avoid learning of the
18 infringement; and

19 Number five, that the product directly infringed
20 the claim.

21 Vicor's culpability is measured against its
22 knowledge and intent at the time of its conduct.

23 The mere knowledge of possible infringement by
24 others does not amount to contributory infringement.

25 Rather, SynQor must prove that Vicor knew that the products

1 infringed a claim of SynQor's patents or subjectively
2 believed there was a high probability that they infringed a
3 claim of SynQor's patents and took deliberate actions to
4 avoid confirming this belief.

5 When considering whether Vicor knew that the
6 products infringe a claim of SynQor's patents or believed
7 there was a high probability that the products infringe a
8 claim of SynQor patents and deliberately avoided confirming
9 that belief, you should consider the totality of the
10 circumstances, including whether Vicor is relying on the
11 advice of a competent lawyer.

12 In order to prove contributory infringement,
13 SynQor must prove that each of the above requirements is
14 met. This proof of each requirement must be by a
15 preponderance of the evidence, that is, more likely than
16 not that each of the above requirements is met.

17 Vicor is liable for Section 271(f)(2) infringement
18 of an asserted claim of a SynQor patent through the supply
19 of bus converters from the United States for a combination
20 abroad if SynQor proves by a preponderance of the evidence
21 that:

22 No. 1, Vicor was aware of the SynQor patents;

23 2, Vicor supplied a component or caused a
24 component to be supplied from the United States to a place
25 outside the United States;

1 No. 3, the component had no substantial
2 non-infringing use;

3 4, that Vicor knew the component was made or
4 adapted for use in a product that would directly infringe
5 the SynQor patents if it were used in the United States or
6 believed there was a high probability that it would
7 infringe and took deliberate actions to avoid learning of
8 the infringement; and

9 5, that Vicor intended for the component to be
10 combined into the product outside of the United States in a
11 manner that would directly infringe the SynQor patents if
12 the combination had been made in the United States.

13 SynQor contends that Vicor willfully infringed the
14 asserted claims of the patents. Vicor denies that it
15 willfully infringed any of the asserted patents -- any of
16 the asserted claims.

17 And if you find that Vicor induces infringement of
18 or contributes to inducement of or infringes through the
19 supply of bus converters from the United States for
20 combination abroad on at least one asserted claim of the
21 SynQor patents, then you must decide whether that
22 infringement was willful.

23 And willfulness requires SynQor to prove by a
24 preponderance of the evidence that Vicor knew of the SynQor
25 patent and that the infringement by Vicor was intentional.

1 You may not determine that the infringement was
2 willful just because Vicor was aware of the patent and
3 infringed. Instead, you must also find that Vicor
4 deliberately infringed the patent.

5 To determine whether Vicor acted willfully, you
6 should consider all the facts and assess Vicor's knowledge
7 at the time of the challenged conduct. Facts that may be
8 considered include, but are not limited to:

9 Whether or not Vicor acted consistently with the
10 standards of behavior for its industry;

11 Whether or not Vicor intentionally copied a
12 product of SynQor that's covered by the patent, the SynQor
13 patent;

14 Whether or not Vicor reasonably believed it did
15 not infringe or that the SynQor patent was invalid;

16 Whether or not Vicor made a good-faith attempt or
17 good-faith effort to avoid infringing the SynQor patent.

18 For example, whether Vicor attempted to design
19 around the SynQor patent; and

20 Whether or not Vicor tried to cover up its
21 infringement.

22 In considering under the totality of the
23 circumstances whether Vicor acted willfully, you may
24 consider as one factor the lack of evidence that Vicor
25 obtained a competent legal opinion.

1 However, you may not assume that merely because
2 Vicor did not obtain a legal opinion, the opinion would
3 have been unfavorable. The absence of a lawyer's opinion,
4 by itself, is insufficient to support a finding of
5 willfulness.

6 Patent invalidity is a defense to patent
7 infringement. Even though the PTO examiner has approved
8 the claims of a patent, you have the ultimate
9 responsibility for determining whether the claims are
10 valid.

11 I'm now going to instruct you on the invalidity
12 issues that you should consider. As you consider these,
13 remember that Vicor bears the burden of proving invalidity
14 by clear and convincing evidence. In other words, Vicor
15 must prove that it is highly probable that the claims are
16 invalid.

17 The issue of a patent -- the issuance of a patent
18 by the PTO provides a presumption that the patent is valid.
19 And from the issuance of the patent, it is presumed that a
20 claimed invention is novel or new, useful, not obvious, and
21 it satisfies the other legal requirements for a valid U.S.
22 patent.

23 Each claim of a patent is presumed valid,
24 regardless of the validity of the other claims, and the
25 presumption of validity remains in tact throughout the

1 litigation, and the burden of proof remains on Vicor to
2 prove invalidity by clear and convincing evidence.

3 The presumption of validity is not an additional
4 hurdle to be cleared for finding invalidity. By applying
5 the clear and convincing standard, you're already
6 accounting for that presumption of validity.

7 Now, these instructions have sometimes referred to
8 "prior art," and prior art is technology and information
9 that was publicly available before the date of the
10 invention. And there is further information in the Court's
11 definition section, the glossary section in Appendix B.

12 As I noted earlier, it's already been determined
13 that the asserted claims of the '702 patent are valid over
14 the prior art.

15 In this case, Vicor contends that Claim 2 of the
16 '190 patent is invalid as obvious.

17 Vicor does not contend that the asserted claims of
18 the '702 patent are invalid as obvious.

19 For Claim 2 of the '190 patent, Vicor contends
20 that the claim is rendered obvious by the following
21 combination of references:

22 1, the Steigerwald '090 patent, the Steigerwald
23 '539 patent and the Pressman article.

24 A patent claim is invalid if the claimed invention
25 would have been obvious to a person of ordinary skill in

1 the field of the invention at the time the invention was
2 made.

3 And this means that even if all the requirements
4 of the claim cannot be found in a single prior art
5 reference that would anticipate the claim, a person of
6 ordinary skill in the field of the invention who knew about
7 all the prior art would have come up with the claimed
8 invention.

9 But a patent claim composed of several
10 requirements is not proved obvious simply by demonstrating
11 that each of the requirements was independently known in
12 the prior art. And this is so because inventions in most,
13 if not all, instances rely upon building blocks long since
14 uncovered and claimed discoveries, almost of necessity,
15 will be combinations of what, in some sense, is already
16 known.

17 Accordingly, you may evaluate whether there was
18 some teaching, suggestion, or motivation to arrive at the
19 claimed invention before the time of the claimed invention,
20 although proof of this is not a requirement to prove
21 obviousness.

22 Teachings, suggestions, motivations may be found
23 in the written references, including the prior art itself.

24 However, teachings and suggestions and motivations
25 may also be found within the knowledge of a person of

1 ordinary skill of the field of the invention, including
2 references (sic) [inferences] and creative steps that a
3 person of ordinary skill in the field would employ.

4 Additionally, teachings, suggestions, and
5 motivations may be found in the nature of the problem
6 solved by the claimed invention or any need or problem
7 known in the field of the invention at the time of and
8 addressed by the invention.

9 Therefore, in evaluating whether such a claim
10 would have been obvious, you should consider a number of
11 factors:

12 No. 1, whether Vicor has identified a reason that
13 would have prompted a person of ordinary skill in the field
14 of the invention to combine the requirements or concepts
15 from the prior art in the same way as in the claimed
16 invention.

17 There's no single way to define the line between
18 true inventiveness on one hand, which is patentable, and
19 the application of common sense and ordinary skill to solve
20 a problem on the other hand, which is not patentable.

21 For example, market forces may be what forced --
22 what produced a change rather than true inventiveness.

23 No. 2, whether the claimed invention applies a
24 known technique that had been used to improve a similar
25 device or system in a similar way.

1 And, No. 3, whether the claimed invention would
2 have been obvious to try, meaning that the claimed
3 innovation was one of a relatively small number of possible
4 approaches to the problem with a reasonable expectation of
5 success by those of ordinary skill in the art in the
6 field -- of the -- skilled in the art in the field of the
7 invention.

8 But you must be careful not to determine
9 obviousness using hindsight. Many true inventions can seem
10 obvious after the fact. You should put yourself in the
11 position of a person of ordinary skill in the field of the
12 invention at the time the claimed invention was made, and
13 you should not consider what is known today or what is
14 learned from the teaching of the patent.

15 The ultimate conclusion of whether a claim is
16 obvious should be based on your determination of several
17 factual issues:

18 1, you must decide the level of the -- of ordinary
19 skill in the field of the invention that someone would have
20 had at the time the claimed invention was made.

21 2, you must decide the scope and the content of
22 the prior art. And in determining the scope and content of
23 the prior art, you must decide whether a reference is
24 pertinent, or analogous, to the claimed invention.

25 Pertinent or analogous prior art includes prior

1 art in the same field as the claimed invention, regardless
2 of the problems addressed by the reference, and prior art
3 from different fields reasonably pertinent to the
4 particular problem with which the claimed invention is
5 concerned.

6 Remember that prior art is not limited to patents
7 and public materials, but includes general knowledge that
8 would have been available to one of ordinary skill in the
9 field of the invention.

10 And, No. 3, you must decide what difference, if
11 any, existed between the claimed invention and the prior
12 art.

13 Finally, you should consider any of the following
14 factors that you find have been shown by the evidence:

15 A, factors contending -- factors tending to show
16 obviousness. And these include:

17 1, commercial success of a product due to the
18 merits of the claimed invention;

19 2, a long-felt but unsolved need for the solution
20 provided by the claimed invention;

21 No. 3, unsuccessful attempts by others to find the
22 solution provided by the claimed invention;

23 No. 4, copying of the claimed invention by others;

24 No. 5, unexpected and superior results from the
25 claimed inventions;

1 6, acceptance by others of the claimed invention
2 as shown by praise from others in the field of the
3 invention or from licensing of the claimed invention;

4 7, disclosures in the prior art that criticized,
5 discredit, or otherwise discourage the claimed invention
6 and would, therefore, tend to show that the invention was
7 not obvious;

8 8, whether the inventor proceeded contrary to
9 accepted wisdom in the field; and

10 9, other evidence tending to show non-obviousness.

11 B, factors tending to show obviousness.

12 No. 1, independent invention of the claimed
13 invention by others before or at about the same time that
14 the named inventors thought of it; and

15 2, other evidence tending to show obviousness.

16 The presence of any of the above factors that tend
17 to show obviousness may be considered by you as an
18 indication that the claimed invention would not have been
19 obvious at the time the claimed invention was made.

20 These factors can be the most probative evidence
21 of non-obviousness and should be used to avoid applying
22 hindsight to the obviousness determination.

23 You may consider any factors that tend to show
24 non-obviousness before reaching an obviousness
25 determination.

1 Conversely, the presence of any of the above
2 factors that tend to show obviousness may be considered by
3 you as an indication that the claimed invention would have
4 been obvious at such time.

5 Although you should consider any evidence of these
6 factors, their relevance and importance to your decision on
7 whether the claimed invention would have been obvious is up
8 to you.

9 Vicor must prove by clear and convincing evidence
10 that a claimed invention was obvious. And if you find that
11 a claimed invention was obvious, as explained above, you
12 must find that claim invalid.

13 Give me one moment.

14 All right. The parties disagree about whether the
15 prior art references I have listed are pertinent or
16 analogous, and, therefore, may be considered as prior art
17 used to determine the validity of the asserted claims.

18 In reaching your conclusion about whether or not
19 any of the asserted claims of the SynQor patents would have
20 been obvious at the time the invention was made, you should
21 consider any difference or differences between the
22 references presented by Vicor and the claimed requirements.

23 In considering whether the claimed invention was
24 obvious, you must first determine the scope and content of
25 the prior art before deciding whether the invention was

1 obvious.

2 The scope and content of prior art includes at
3 least prior art in the same field as the claimed invention
4 and prior art from different fields that a person of
5 ordinary skill in the art would have considered when trying
6 to solve the problem that's addressed by the invention.

7 Furthermore, prior art is not limited to patents
8 and published material, but it also includes the general
9 knowledge that would have been available to one of ordinary
10 skill in the field of the invention.

11 In deciding what the level of ordinary skill in
12 the art would have -- of the claimed invention is, you
13 should consider all of the evidence that was introduced at
14 trial, including, but not limited to:

15 The levels of education and experience of the
16 inventor and other persons actively working in the field;
17 and

18 The types of problems encountered in the field;
19 The prior art solutions to those problems;
20 The rapidity with which innovations are made; and
21 Finally, the sophistication of the technology.

22 I will now instruct you on patent damages.

23 If you find that Vicor has infringed one or more
24 valid asserted claims of the SynQor patents, you must
25 determine the amount of money damages, if any, to which

1 Vicor is entitled.

2 By instructing you on damages, I do not suggest
3 that one party or the other -- that one or the other
4 parties should prevail.

5 These instructions are provided to guide you on
6 the calculation of damages in the event that you find
7 infringement of a valid patent claim.

8 If you find that Vicor has not infringed any valid
9 claim of the patents-in-suit, then SynQor is not entitled
10 to any patent damages.

11 The amount of damages, if any, must be adequate to
12 compensate SynQor for any infringement you have found.

13 If you find that Vicor has infringed, in no event
14 may the damages award be less than a reasonable royalty.

15 And I will explain the term "reasonable royalty"
16 in more detail shortly.

17 Your damages determination must not include
18 additional sums to punish Vicor or to set an example. You
19 may award compensatory damages only for the loss that
20 SynQor proves was more likely than not caused by Vicor's
21 infringement.

22 As I mentioned earlier, any finding of willful
23 infringement is not relevant to your assessment of damages.

24 When a party -- or when the parties dispute a
25 matter concerning patent damages, it is SynQor's burden to

1 prove by a preponderance of the evidence that its version
2 is correct.

3 SynQor must prove the amount of damages with
4 reasonable certainty, but need not prove the amount of
5 damages with mathematical precision.

6 However, SynQor is not entitled to damages that
7 are speculative, that are merely possible, or damages that
8 are based on guesswork.

9 In determining the amount of damages, you must
10 determine when the damages began to accrue.

11 The calculation of damages should begin as of the
12 date the actionable infringement began.

13 To be clear, lost profits and reasonable royalty
14 are alternative measures of damages under the law, and
15 SynQor is not seeking a lost profits calculation of
16 damages.

17 Although SynQor's anticipated lost profits may be
18 considered to determine a reasonable royalty, under several
19 of the reasonable royalty factors that are -- I will
20 describe momentarily, the law does not authorize the direct
21 setting of the reasonable royalty in the amount of SynQor's
22 lost profits.

23 A reasonable -- a royalty is a payment that is
24 made to SynQor in exchange for the rights to make, use,
25 sell, offer to sell, or import the claimed invention.

1 A reasonable royalty is the payment that would
2 have resulted from a negotiation between SynQor and Vicor
3 taking place just before the time when the infringement
4 first began.

5 In considering the nature of this hypothetical
6 negotiation, the focus on what the expectations of SynQor
7 and Vicor would have been had they entered into an
8 agreement at that time and acted reasonably in their
9 negotiations.

10 You must assume that both parties believed the
11 patent was valid and infringed. You must also assume that
12 SynQor and Vicor were willing to enter into an agreement.

13 Your role is to determine what the agreement would
14 have been. And the test for damages is what royalty would
15 have resulted from that hypothetical negotiation and not
16 simply what either party would have preferred.

17 The date of the hypothetical negotiation between
18 SynQor and Vicor is the date of the alleged -- is the date
19 the alleged infringement first began.

20 The parties agree that the date of the
21 hypothetical negotiation is July 2006.

22 Evidence of things that happened after the
23 infringement first began can be considered in evaluating
24 the reasonable royalty only to the extent that the evidence
25 aids in assessing what royalty would have resulted from the

1 hypothetical negotiation.

2 Although evidence of the actual profits an alleged
3 infringer made may be used to determine the alleged -- or
4 the anticipated profits at the time of the hypothetical
5 negotiation, the royalty may not be limited or increased
6 based on the actual profits the alleged infringer made.

7 In deciding what is a reasonable royalty that
8 would have resulted from the hypothetical negotiation, you
9 may consider the factors that the patent owner, SynQor, and
10 the alleged infringer, Vicor, would consider in setting the
11 amount the alleged infringer should pay.

12 And I'm going to list for you a number of factors.
13 They are as follows:

14 No. 1, the royalties received by SynQor for the
15 licensing of the asserted patents, proving or tending to
16 prove an established royalty;

17 2, the rates paid by Vicor for the use of other
18 patents comparable to the patents-in-suit;

19 3, the nature and scope of the license, as
20 exclusive or non-exclusive, or as restricted or
21 non-restricted in terms of territory or with respect to
22 whom the manufactured product may be sold;

23 4, SynQor's established policy and marketing
24 program to maintain its patent monopoly by not licensing
25 others to use the invention or by granting licenses under

1 special conditions designed to preserve that monopoly;

2 5, the commercial relationship between SynQor and
3 Vicor, such as whether they are competitors in the same
4 territory in the same line of business, or whether they
5 were inventor and promoter;

6 6, the effect of selling the patented specialty in
7 promoting sales of other products of Vicor, the existing
8 value of the invention to the licensor as a generator of
9 sales of his non-patented items, and the extent of such
10 derivative or convoyed sales;

11 7, the duration of the patents and the term of the
12 license;

13 8, the established profitability of the product
14 made under the patents, its commercial success, and its
15 current popularity;

16 9, the utility and advantages of the patented
17 property over the old modes and devices, if any, that had
18 been used for working out similar results;

19 10, the nature of the patented invention, the
20 character of the commercial embodiment of it as owned or
21 produced by SynQor, and the benefits to those who have used
22 the invention;

23 No. 11, the extent to which the infringer has made
24 use of the invention and any evidence probative of the
25 value of that use;

1 12, the portion of the profit or of the selling
2 price that may be customary in the particular business or
3 in comparable business to allow for the use of the
4 invention or analogous inventions;

5 13, the portion of the realizable profits that
6 should be credited to the invention as distinguished from
7 non-patented elements, the manufacturing process, business
8 risks, or significant features or improvements added by the
9 infringer;

10 14, the opinion and testimony of qualified
11 experts;

12 15, the amount that a licensor, such as SynQor,
13 and a licensee, such as Vicor, would have agreed upon at
14 the time the infringement began if both had been acting --
15 if both had been reasonably and voluntarily trying to reach
16 an agreement; that is, the amount which a prudent
17 licensee -- who desired, as a business proposition, to
18 obtain a license to manufacture and sell a particular
19 article embodying the patented invention -- would have been
20 willing to pay as a royalty and yet be able to make a
21 reasonable profit and which amount would have been
22 acceptable by a prudent patentee who was willing to grant a
23 license.

24 No one factor is dispositive, and you can and
25 should consider the evidence that has been presented to you

1 in this case on each of these factors.

2 You may also consider any other factors which in
3 your mind would have increased or decreased the royalty the
4 infringer would have been willing to pay and the patent
5 owner -- the patent holder would have been willing to
6 accept, acting as normally prudent business people.

7 The final factor establishes the framework which
8 you should use in determining a reasonable royalty, that
9 is, the payment that would have resulted from a negotiation
10 between the patent holder and the infringer taking place at
11 a time prior to when the infringement began.

12 In determining a reasonable royalty, you may also
13 consider whether or not a commercially acceptable
14 non-infringing alternative was available to Vicor at the
15 time of the hypothetical negotiation and whether that would
16 have affected the reasonable royalty the parties would have
17 agreed upon.

18 When determining a reasonable royalty, you may
19 consider evidence concerning the amounts that other parties
20 have paid for rights to the patent in question or for
21 rights to similar technologies.

22 A license agreement need not be perfectly
23 comparable to the hypothetical license that would have been
24 negotiated between SynQor and Vicor in order for you to
25 consider it.

1 However, if you choose to rely upon evidence from
2 any license agreement, you must account for any differences
3 between those licenses and the hypothetically negotiated
4 license between SynQor and Vicor when you make your
5 reasonable royalty determinations, including whether the
6 license contained any value related to a release of
7 liability, the date when the license was entered, the
8 financial or economic conditions of the parties at the time
9 the parties entered into the license, the number of patents
10 involved in the license, and the extent to which litigation
11 may have affected the license.

12 The law requires that any royalty awarded to
13 SynQor correspond to the value of the alleged invention
14 within the infringing product as distinct from other
15 unpatented features of the infringing product.

16 This is particularly true where the infringing
17 product has multiple features and multiple components not
18 covered by the patent or where the accused product works in
19 conjunction with other non-patented components.

20 If unpatented features contribute to an infringing
21 product, you must apportion that value to exclude any value
22 attributable to unpatented features.

23 You must determine an appropriate royalty rate and
24 an appropriate royalty base that reflect the value
25 attributable to the patented invention alone.

1 During this trial, you heard evidence relating to
2 Vicor's counterclaims for unfair competition under
3 Massachusetts general law, Chapter 93A and tortious
4 interference with prospective economic advantage. The
5 Court has resolved these claims in SynQor's favor.

6 You should, therefore, disregard any evidence
7 solely related to these counterclaims in rendering your
8 verdict.

9 It is your sworn duty as jurors to discuss the
10 case with one another in an effort to reach agreement if
11 you can do so.

12 Each of you must decide the case for yourself, but
13 only after full consideration of the evidence with the
14 other members of the jury.

15 While you are discussing the case, do not hesitate
16 to re-examine your own opinion and change your mind if you
17 become convinced that you are wrong.

18 However, do not give up your honest beliefs solely
19 because the others think differently or merely to finish
20 the case.

21 Remember, in a very real way, you are the judges,
22 judges of the facts, and your only interest is to seek the
23 truth from the evidence in the case.

24 When you retire to your -- to the jury room to
25 begin your deliberations, each of you will have a copy of

1 the instructions, and the exhibits will be provided to you.

2 The first thing you should do is to select one
3 among your number to serve as your foreperson who will
4 guide your deliberations and speak for you here in the
5 courtroom.

6 If at any time you recess during your
7 deliberations, you should follow all of the instructions I
8 have given you throughout the trial about your conduct.

9 After you have reached a unanimous verdict, your
10 foreperson should fill in the verdict form and answer the
11 questions.

12 You should not reveal your answers until such time
13 as you are discharged unless otherwise directed by me, and
14 you should never disclose to anyone, not even to me, your
15 numerical division on any question.

16 If for any reason you have to communicate with me
17 at any time during your deliberations, please give a
18 written message or question to the bailiff who will bring
19 it to me, and then I will respond in writing or by having
20 you brought into the courtroom so that I can address you
21 orally. I will always first disclose to the attorneys your
22 question and my response before I answer your question.

23 And after you have reached a verdict, you are not
24 required to talk with anyone about the case unless for some
25 reason I order otherwise.

1 All right. That completes the reading of the
2 Court's charge.

3 Mr. Pak?

4 MR. PAK: Your Honor, may I approach the bench?

5 THE COURT: Of course, yes.

6 (Bench conference.)

7 MR. PAK: Your Honor, there might have been a
8 transcription error, but I think you meant to say
9 "inferences" and you misstated as "references."

10 THE COURT: Okay.

11 MR. PAK: And that was on 22.

12 THE COURT: On 22.

13 You agree, Mr. Rein?

14 MR. REIN: I didn't hear it, but I have no reason
15 to disagree.

16 THE COURT: Okay. I may have just misspoken.

17 The footnotes throughout, not many, but a couple
18 would cite cases, like think beginning on Page 24.

19 I think -- I don't know whether you all had
20 intended to leave those out.

21 MR. REIN: I would normally take them out.

22 THE COURT: I would normally take them out, too.

23 Mr. Rein, you agree with that?

24 MR. PAK: I do agree.

25 THE COURT: Okay. So I have that as Pages 24, 27,

1 30, and that's it.

2 MR. PAK: All right.

3 THE COURT: So we'll make that change. We'll
4 double-check those, the only ones, and you'll want me to
5 make the change.

6 Do you want me want me to do anything about that
7 other than to make the change?

8 MR. PAK: No, Your Honor, if you could just make
9 the correction.

10 THE COURT: We'll make that correction.

11 MR. REIN: And I take it, the instructions will go
12 back with the jury?

13 THE COURT: They will. We'll have to make the
14 changes, so there will be some delay.

15 But at this point, I'm going to have -- let them
16 have their lunch, we'll break for an hour, and come back
17 and do our closings.

18 MR. PAK: Thank you.

19 MR. REIN: Works for us.

20 THE COURT: Thanks.

21 (Bench conference concluded.)

22 THE COURT: All right. Ladies and gentlemen, as I
23 said, that completes the reading of the instructions on the
24 law that you will follow once you begin your deliberations.

25 Your lunch is here, and I think the thing that

1 makes the most sense in order to avoid having the parties
2 split their closings is we'll have you all have your lunch
3 now, and you'll come back, and you'll hear from the
4 Plaintiff, and then you'll hear from the Defendant, and
5 then the Plaintiff will have a short opportunity to provide
6 rebuttal after that, and then you'll go back to the jury
7 room and begin your deliberations.

8 So our plan is to start back here in the courtroom
9 about an hour from now. So somewhere in the neighborhood
10 of 12:45, we'll have you back in the courtroom to begin
11 closing arguments.

12 So at this time, Mr. Latham, if you would escort
13 the jury back to the jury room.

14 COURT SECURITY OFFICER: All rise.

15 (Jury out.)

16 THE COURT: Okay. We're removing the footnotes
17 pursuant to the conversation we had at the bench.

18 And making sure the word is correct there,
19 Mr. Pak --

20 MR. PAK: Thank you.

21 THE COURT: -- that you pointed out to us.

22 And we will plan to reconvene here about an hour
23 from now.

24 Any issues from either side before we recess?

25 MR. REIN: Not from Plaintiffs.

1 MR. PAK: None from the Defendant.

2 THE COURT: Okay. See you in about an hour.

3 (Recess.)

4 (Jury out.)

5 COURT SECURITY OFFICER: All rise.

6 THE COURT: All right. Are the parties ready to
7 proceed?

8 MR. GILLAM: Yes, Your Honor.

9 MR. PAK: Yes, Your Honor.

10 THE COURT: Does anyone want a warning at the --
11 at some point in your closing?

12 MR. PAK: Yes, Your Honor, if I get a 15-minute
13 warning on mine.

14 THE COURT: Okay. You're starting --

15 MR. PAK: Yeah, I'm starting first, Your Honor.

16 THE COURT: Okay. 15 minutes in --

17 MR. PAK: Left.

18 THE COURT: -- or left?

19 MR. PAK: Left.

20 THE COURT: So 15 minutes out of the hour?

21 MR. PAK: No, 15 minutes, that'd be towards the
22 end, 15 minutes left.

23 THE COURT: So how much time are you planning on
24 using?

25 MR. PAK: 45 minutes.

1 THE COURT: 45.

2 Okay. So when you've used 30 minutes, I'll give
3 you a warning.

4 MR. PAK: Thank you.

5 THE COURT: All right. On the Plaintiff's side?

6 MR. REIN: Your Honor, if you could give me a
7 five-minute warning during the rebuttal only, not during
8 the initial.

9 THE COURT: Okay. Are you doing all of the
10 closing?

11 MR. REIN: No, Ms. Koh is going to do part of it.

12 THE COURT: Ms. Koh is going to do part.

13 So you want five minutes at the -- at minute 55?

14 MR. REIN: Yes.

15 THE COURT: Okay. If you would, have the jury
16 brought up.

17 MR. DACUS: Mrs. Schroeder, would you turn this on
18 our side? He's trying to test. Thank you.

19 MR. PAK: Thank you.

20 (Jury in.)

21 THE COURT: Please be seated.

22 Okay. Ladies and gentlemen of the jury, welcome
23 back from lunch.

24 At this time, we'll begin the parties' closing
25 arguments.

1 SynQor may proceed.

2 MR. REIN: Thank you, Your Honor.

3 Ladies and gentlemen, we heard at the beginning of
4 the case -- actually, we heard from Vicor's counsel that we
5 are here to protect the integrity of the patent system. I
6 couldn't agree more.

7 But here's where the parties disagree. Vicor
8 thinks that because it has made many contributions to the
9 industry and has many patents of its own, it doesn't have
10 to respect the patents of SynQor or anyone else.

11 SynQor, on the other hand, believes in the patent
12 system and respects the patents of everyone.

13 As you heard, Vicor and SynQor have vigorously
14 competed against each other in various market segments over
15 the years, but SynQor still respects the technical
16 contributions of Dr. Vinciarelli and Vicor that have been
17 made over the years.

18 You heard Mr. Born say that Dr. Schlecht has
19 admiration for Vicor, but what is more important is that
20 SynQor has respected the boundaries of Vicor's patents,
21 which is why you did not hear any suggestion that SynQor
22 violated any of Vicor's many patents.

23 The problem here is that Dr. Vinciarelli and Vicor
24 think that, because they have put their patented technology
25 into their own products, they are above everyone else's

1 patents.

2 You heard Dr. Vinciarelli tell me when I
3 cross-examined him that he doesn't even have to look at the
4 claims of SynQor's patents or the patents of any other
5 company in the world. He just thinks his technology can't
6 infringe because he has his own patents.

7 You were instructed by the Court that to determine
8 infringement, you do need to compare the accused products
9 with the claims of SynQor's patents. You don't get a pass
10 because you have your own patents, and you were
11 specifically instructed, if you recall, that the existence
12 of an accused infringer's own patent does not constitute a
13 defense to infringement of somebody else's patent.

14 But Dr. Vinciarelli, he thinks he doesn't even
15 have to look at the claims of anyone's patents.

16 It was also striking how little respect
17 Dr. Vinciarelli had for Dr. Schlecht's patented invention
18 and the contributions that IBA has made to the industry.

19 This builds on some of the things that Vicor told
20 you during its opening. SynQor doesn't even claim now to
21 have invented IBA technology, Mr. Pak said.

22 That is completely false.

23 Mr. Pak then said, SynQor admits now that -- that
24 that was all in the work that was done by another gentleman
25 named Dr. Steigerwald. And they -- and he said, you will

1 see his video testimony.

2 False again, which no doubt is why they did not
3 show you or play that testimony.

4 And then Mr. Pak said, Dr. Schlecht worked for
5 Dr. Steigerwald.

6 Also false. One untruth after another.

7 As you saw, Vicor does not even challenge the
8 validity of the two claims of the '702 patent, which we
9 heard described, and claim unregulated IBA. So how can
10 Vicor tell you that Dr. Schlecht did not invent unregulated
11 IBA? That makes no sense.

12 And Vicor also trivializes what unregulated IBA
13 has meant to the industry.

14 For that, we only need to look at what major
15 customers, IBM and Cisco, had to say. IBA was the only
16 option for IBM, and Cisco selected it because of its great
17 value.

18 And, of course, we also learned that the industry
19 has paid SynQor approximately \$150 million because of the
20 great value of this invention.

21 Vicor is ignoring an important chapter in the
22 power electronics industry that was spear-headed by
23 Dr. Schlecht and his patented invention.

24 That brings me to the first question that you will
25 be asked on the verdict form.

1 Has Vicor induced or contributed to the
2 infringement of SynQor's patent claims?

3 And there are several things you'll need to
4 consider here.

5 First, do the end products that are accused of
6 infringement, do they meet the various claim limitations
7 that are present in the end products? We heard them called
8 the end product limitations.

9 Dr. Dickens went through that in great detail.
10 And Vicor had no response. None. There is no dispute that
11 those end product limitations are met, and there's no
12 serious dispute that Vicor's accused bus converters are
13 always used in those end products. Again, Dr. Dickens gave
14 you all that evidence. And we heard nothing from Vicor on
15 that.

16 The second question is: Do Vicor's accused bus
17 converters meet all of the bus converter limitations?

18 And there are a few disputes there, but it's just
19 about two requirements, what you heard called "in sync" and
20 what you heard called "short transitions." And I'm going
21 to talk about both.

22 On in sync, Vicor's defense evaporated at trial.
23 It disappeared.

24 Dr. Dickens provided you with the waveforms that
25 you see here. He explained how the limitation is met in

1 all of Vicor's accused bus converters under the Court's
2 construction of what that means. He tested many
3 converters, and the waveforms were very consistent, as he
4 explained to you.

5 What about Dr. Habetler? He didn't dispute the
6 showing at all. He presented no technical presentation
7 whatsoever on this. Instead, he told you that it is
8 SynQor's burden to show the in synchronization requirement
9 has been met.

10 Well, SynQor more than met that burden, and
11 Dr. Habetler completely punted on the issue. This
12 non-infringement defense should never have been raised in
13 the first place.

14 So let's now talk about short transitions. There
15 are two issues here.

16 First is the question of whether three parts -- I
17 know it's hard to keep these part numbers in your head, but
18 you've heard them referred to as the VIZ0002, the 2C, and
19 the 0014. These are all BCMs.

20 And the first question is whether those three
21 parts were fairly represented by a part that both parties
22 agree has transitions that are less than 20 percent.

23 If so, these parts would literally satisfy the
24 short transitions requirement. Equivalents is not even an
25 issue.

1 On that, Dr. Dickens's testimony was, again,
2 unrebutted. Dr. Habetler has no opinion on the
3 representativeness of the part. He was asked that. No
4 opinion.

5 And the part SynQor's experts tested used the same
6 components and schematic as used by those three parts. The
7 only difference, as Dr. Dickens explained, was the
8 underfill glue. And both parties agree that underfill glue
9 does not affect transition times.

10 SynQor's measurement was 17.52 percent for this
11 representative product. Vicor's expert measured that same
12 bus converter, and he came up with transition times that
13 were even shorter. Both are indisputably short transitions
14 under the Court's claim construction.

15 And, in fact, this is undisputed, Vicor stipulated
16 to all of SynQor's calculated transition times except for
17 the three parts we've heard so much about. It didn't
18 dispute the time for this representative product, only
19 whether it was representative.

20 And based on these measurements and the
21 commonality of the schematics and components, Dr. Dickens
22 concluded that the VIZ0002, 2C, and 0014 bus converters
23 would have the same measurements.

24 And he told you he was confident in this. SynQor
25 thought that that would be the end of it since Dr. Habetler

1 did not contest representativeness.

2 But, at trial, Vicor's attorneys tried to make
3 something out of the fact that SynQor would not pay \$18,000
4 to have Vicor specially make a VIZ0002 product for SynQor
5 to measure. Vicor said it was SynQor's burden to do more
6 testing.

7 That is not the law. It is SynQor's burden to
8 present evidence that makes it more likely than not that
9 these three bus converters, the VIZ0002, 2C, and 014, based
10 on all the evidence that you've heard, had transition times
11 beneath 20 percent.

12 And the evidence here also included
13 Dr. Vinciarelli's testimony on cross-examination, which you
14 can see on the screen. He said that the Vicor BCM products
15 that were sold prior to his 2011 deposition had rise and
16 fall times that are typically less than 20 percent of the
17 overall switching cycle.

18 And that's short, under the Court's claim
19 construction.

20 The VIZ002 -- 0002, 2C, and 0014 bus converters,
21 they were all sold as of the time that Dr. Vinciarelli gave
22 that testimony.

23 But when Vicor's attorneys pressed Dr. Dickens on
24 why SynQor would not just pay Vicor \$18,000 for yet -- for
25 another part to measure, Dr. Dickens explained that he

1 would not pay that kind of money for the part because
2 SynQor already had an identical one.

3 And consider also this, this part was
4 discontinued, as you heard. SynQor couldn't know to what
5 extent any of the components that Vicor would use to make
6 one would be new, and you heard that different components
7 can affect things like transition times.

8 So the best measurement -- or the best evidence of
9 what the result would be was the identical part that SynQor
10 already had, same components, same circuit diagram, and the
11 one that both parties' experts had measured and the one
12 that was agreed to be representative, or at least there was
13 no dispute from Dr. Habetler that it was representative.

14 Given all this evidence, it is certainly more
15 likely than not that all three of these parts that we've
16 heard so much about have short transitions, literally have
17 short transitions, under 20 percent, just as
18 Dr. Vinciarelli's testimony indicated. They all literally
19 infringe.

20 And that brings me to the second short transitions
21 question. Do the accused IBCs and some of the BCMs that
22 have transitions between 20 percent and around 27 percent,
23 do they infringe under what you were told is the Doctrine
24 of Equivalents?

25 As Dr. Vinciarelli indicated at trial, he

1 increased the transition times in some of Vicor's products.
2 But after learning that, SynQor advised Vicor that they
3 still infringe under the Doctrine of Equivalents.

4 Let's talk about what the law is on this before
5 we -- I walk through the evidence.

6 Remember how Mr. Pak during his opening told you
7 that there was a fence, and once that fence is put up, the
8 patent holder can -- cannot prevent anything beyond the
9 fence.

10 Well, as you just heard, that is not the law. It
11 ignores the Doctrine of Equivalents and what that doctrine
12 allows a patentee to protect, beyond the fence.

13 Remember, also, how on cross-examination of
14 Dr. Schlecht, Vicor's counsel suggested that if you were in
15 school and a teacher says that you have the numbers 5, 7,
16 and 26, and you're supposed to pick a number under 20, then
17 26 would be a wrong answer.

18 But this isn't an arithmetic class in elementary
19 school. Judge Schroeder wouldn't be instructing you about
20 the Doctrine of Equivalents if there was no number above
21 20 percent that could be equivalent for purposes of the
22 short transitions limitation.

23 This is not about numbers in the abstract. It's
24 also about waveforms, it's technical, as Dr. Dickens
25 explained, both times that he testified.

1 And let's take a look at what the Court just told
2 you about the Doctrine of Equivalents.

3 As Dr. Dickens explained during his direct, the
4 first test is whether the difference would be
5 insubstantial.

6 The second test is whether the bus converter
7 performs substantially the same function in substantially
8 the same way to achieve substantially the same result.

9 You only have to meet one of these two tests, but
10 Dr. Dickens, he explained to you that both are met. The
11 entire purpose of the Doctrine of Equivalents is to prevent
12 someone from avoiding infringement by making an
13 insubstantial change that gets them just outside of that
14 fence or that gets them just above the number that is
15 provided.

16 And that's what happened here. As I just said,
17 equivalents is not just a matter of numbers, it's a matter
18 of waveforms.

19 Recall when I cross-examined Dr. Vinciarelli, he
20 acknowledged that square wave converters have short
21 transitions. You can see that on the screen.

22 And then recall also when I presented
23 Dr. Vinciarelli with his deposition testimony, where he
24 acknowledged that the waveform of Vicor's primary winding
25 is substantially a square wave. We saw that again

1 yesterday.

2 And now let's take a look at why Dr. Vinciarelli
3 had to acknowledge that his bus converters have these
4 square waves.

5 Yesterday, Dr. Dickens showed you a second time
6 the waveform of Vicor's accused converters. The one on the
7 right, that one literally infringes because the transition
8 time is 17 percent. The one on the left is one where the
9 transitions were increased to around 27 percent.

10 As Dr. Dickens explained, both of these have
11 square waves. You can see the shape yourself. And they
12 both look remarkably similar.

13 Remember, Dr. Vinciarelli told us the square wave
14 converters inherently have short transitions. Well, these
15 two have square waves. They, thus, have short transitions.
16 The first literally infringes, and the second infringes
17 because it is equivalent.

18 That's not all. Dr. Dickens further explained
19 that the ones with 20 to 27 percent transitions, they also
20 meet the function-way-result test, as we can see on
21 Dr. Dickens's slide.

22 Vicor wants you to ignore all this because it says
23 its converters implement what you heard was zero-voltage
24 switching.

25 But how can that be a get-out-of-jail card when

1 some of his bus converters literally have short
2 transitions? That necessarily means that zero-voltage
3 switching does not tell you one way or the other whether
4 the converters literally or equivalently have short
5 transitions.

6 Moreover, Dr. Habetler acknowledged on
7 cross-examination that Vicor's bus converters do not
8 perfectly implement zero-current switching. They come
9 close. But they still have some switching losses, which he
10 said were insignificant.

11 As Dr. Dickens went on to explain, though, short
12 transitions do limit these switching losses even further,
13 and this is part of the reason that Vicor did not make its
14 transitions much longer than the 27 percent point.

15 So all of the end products incorporating Vicor's
16 accused bus converters, they all directly infringe, some
17 literally and others by equivalents.

18 And that's really the technical issues involving
19 infringement here.

20 As you heard, Vicor isn't accused of direct
21 infringement; it is accused of inducing and contributing to
22 the infringement of its customers.

23 As I mentioned during my opening, Vicor could, in
24 theory, get off the hook if it had a reasonable and a
25 good-faith belief that it was not infringing SynQor's

1 patents at the time it was making its sales. But Vicor has
2 failed to demonstrate that here. In fact, the evidence
3 shows exactly the opposite.

4 The evidence shows that Vicor willfully blinded
5 itself to a high probability that it was infringing
6 SynQor's patents. Let's take a look at that evidence.

7 We saw PTX-1198, that's on the screen now, at
8 trial several times. It is the email that Vicor wildly
9 circulated one day after SynQor filed its prior patent
10 infringement suit in November of 2007. And this states
11 that SynQor had charged several of its competitors with
12 infringement.

13 And the announcement specifically identified
14 SynQor's '190 patent, one of the two patents here. Despite
15 its wide circulation, including to Vicor's VP of marketing
16 and VP of sales, Vicor said, to all of you, that it did not
17 as much as look at SynQor's patents for three or more
18 years.

19 And you heard from Dr. Vinciarelli why that was
20 the case. Vicor has no procedure for clearing new
21 products, no procedure to make sure that Vicor's products
22 don't infringe someone else's patents before introducing
23 those products. And you also heard why that's the case.

24 As I noted earlier, and you can see again on the
25 screen, Dr. Vinciarelli and Vicor just think that they're

1 above the patent system, at least when it comes to other
2 people's patents. They think their products are so
3 advanced that they don't even need to look at anyone's
4 patent claims, including SynQor's here.

5 This is also presumably why they did not come
6 forward with an opinion of counsel that they relied on.
7 Why get an opinion from an expert on patent law when you
8 think that you're above the patent system?

9 And that brings me to an important instruction
10 that you receive from Judge Schroeder, it's on willful
11 blindness.

12 Here's what he told you: When considering whether
13 Vicor knew or was willfully blind to a high probability
14 that the induced actions would constitute infringement, you
15 should consider the totality of the circumstances,
16 including whether Vicor is relying on the advice of a
17 competent lawyer.

18 As you can now -- if we move to the next slide.

19 As you can now see on the screen, Dr. Vinciarelli
20 knows that the claims of a patent are what define the scope
21 of one's patent, the metes and bounds of the invention.

22 But despite nearly 30 employees, 30 Vicor
23 employees, including two vice presidents, knowing back in
24 November of 2007 of SynQor's lawsuit against 11 different
25 bus converter suppliers, which was said to involve the

1 assertion of the '190 patent, Vicor claims it did not as
2 much as look at the patent for three years.

3 And then Dr. Vinciarelli tells us he had no need
4 for a claim analysis or the advice of a patent attorney.
5 Vicor blinded itself to a known risk.

6 As I said before, for Vicor, these opportunities
7 to build business with important customers was just too
8 valuable to pass up.

9 The last part of inducement is really simple. Did
10 Vicor intend to cause the acts that resulted in
11 infringement?

12 Of course, they did. Vicor sold its bus
13 converters to Cisco, IBM, and other customers knowing and
14 intending that they would be used in IBA.

15 Let's look at the evidence on that.

16 Vicor says that customers can do what they want
17 with Vicor's products and that Vicor promotes FPA, not IBA.
18 But customers use these accused bus converters, the ones
19 before you, where the parts are qualified to be used. And
20 Vicor knew they were qualified for use in IBA systems when
21 it sold BCMs to IBM and when it sold IBCs to Cisco and
22 other customers.

23 The evidence is really clear on that.

24 You did not hear of IBM qualifying the BCMs for
25 anything else. Rather, as Mr. Covi testified, each and

1 every BCM was used by IBM in an IBA system. It's right on
2 the screen.

3 And when the bus converters were qualified for use
4 in an IBA system, that is where they are used. Vicor knows
5 that, and it encourages that. And the same is true of the
6 IBCs.

7 Let's look at some of the testimony you saw from
8 Mr. Marchetti on that.

9 He acknowledged, when discussing some of Vicor's
10 bus converters, that they are intended to be used in an IBA
11 architecture. As he said here, that's where you logically
12 use something like that.

13 And that's not all. Vicor encourages, promotes,
14 and instructs the infringing uses of its bus converters.
15 It publishes application notes and data sheets, among other
16 things.

17 Let's now take a look at the testimony of Vicor's
18 corporate representative on this issue, Mr. Yeaman. You
19 saw his videotaped testimony. Let me just read what he
20 says here.

21 Question: Does Vicor advertise, instruct, or any
22 way encourage its customers to use its bus converters in
23 IBA?

24 Answer: Yes.

25 This is an admission that Vicor induced the acts

1 that resulted in infringement. There can be no real
2 dispute about that. This was Vicor's corporate
3 representative on this issue. And that's all you need to
4 consider to determine that Vicor has induced infringement.

5 Now, for contributory infringement, there are
6 somewhat different requirements that you need to consider.
7 And it's important to keep in mind that SynQor is only
8 accusing Vicor of contributory infringement for its
9 high-voltage BCMs and its IBCs, not the low-voltage IBCs.

10 That's not included in part of Mr. Reed's damage
11 calculation for foreign sales, as you'll hear.

12 For contributory infringement, you have to
13 consider whether Vicor's bus converters are a material or
14 substantial component in the directly infringing IBA
15 systems.

16 As you learned, the bus converter is
17 unquestionably a material or substantial component in the
18 infringing IBA systems. They provide the isolation
19 function. All of the load power passes through them.

20 And the next question is whether the high-voltage
21 BCMs and the IBCs have substantial non-infringing uses.

22 You heard that term thrown around a lot, but I
23 want to walk you -- through the evidence with you on that
24 so you don't get confused.

25 Vicor first argued that IBM had a substantial

1 non-infringing use for high-voltage BCMs with the Yeaman
2 topology. But Mr. Covi testified that all of the accused
3 high-voltage BCMs were used, every one of them, in IBA
4 systems. And, obviously, IBM should know better than
5 anyone how it used these BCMs.

6 Vicor also tries to confuse things by injecting a
7 different part, a 350-volt converter that puts out 44 volts
8 instead of 11 or 12, like the accused ones. And that's a
9 part that IBM used in its factorized power implementation,
10 in its next-generation Power 7 product.

11 But, again, as Mr. Covi explained, IBM used all of
12 Vicor's 350 to 11 or 12-volt BCMs in an IBA arrangement.
13 And those are the accused bus converters, not the 350 to 44
14 volt converters.

15 There were no different uses for the high-voltage
16 BCMs that are accused in this case.

17 Now, Vicor also said its accused bus converters
18 were used in what was referred to as a MicroPAC
19 application. You heard that name.

20 So we asked Vicor's corporate representative,
21 Mr. Yeaman, about that. And you saw his video testimony.
22 He had zero knowledge on this supposed use, as you can see
23 on the screen. And the alleged use was small anyway, just
24 a few hundred sales.

25 He was Vicor's corporate representative on this

1 subject.

2 Now, at trial, Dr. Habetler also referenced the
3 NYC Transit and Raytheon applications, as if those
4 mattered, but then he conceded on cross-examination that
5 these weren't high-voltage BCMs or IBCs.

6 They, therefore, are irrelevant to the
7 contributory infringement issue that you need to decide.
8 They can't be a contributory -- they can't be a
9 non-infringing alternative for these converters, not for
10 the high-voltage BCMs and not for the IBCs.

11 And, finally, Dr. Habetler showed you a data
12 sheet, as if to suggest that that data sheet alone tells
13 you how the customers use the BCMs or the IBCs.

14 But when you qualify a part for a customer, you
15 know how it's used. Merely putting a potential use on a
16 data sheet, that doesn't mean it has been used that way,
17 and it certainly doesn't tell you that anyone who used it
18 that way did so in a substantial way.

19 And we know they were not used that way because
20 Mr. Covi told us that. Again, he said that all of the
21 high-voltage BCMs were used by IBM in an IBA system, and we
22 know the same for the IBCs because they were drop-in
23 replacements for the product found to infringe -- the
24 products found to infringe in the last lawsuit. That means
25 that Vicor contributorily infringes SynQor's patents.

1 So, in summary, when you're answering the first
2 infringement question on the verdict form, the answer is,
3 yes, Vicor induces and contributes to the infringements
4 that occurred.

5 When you answer the second question on the verdict
6 form, the answer is also, yes, Vicor is liable for
7 infringing the asserted claims by supplying high-voltage
8 BCMs and IBCs from the United States for combination
9 outside the United States into the customers' directly
10 infringing IBA systems.

11 As you already heard, Vicor's high-voltage BCMs
12 and IBCs, they have no substantial non-infringing use. And
13 Vicor knew it. And Vicor intended that those BCMs and IBCs
14 would be combined outside the United States into infringing
15 IBA systems. That is why you should check "yes."

16 Now, that brings me to the third question you'll
17 have to answer, whether Claim 2 of the '190 patent is
18 valid.

19 We saw at trial that Vicor presented a
20 half-hearted invalidity defense. This case has two claims
21 of the '702 patent and one claim of the '190 patent. All
22 these claims, as you were told, are directed at the use of
23 unregulated bus converters with particular characteristics
24 in an IBA system.

25 And Vicor did not even argue that the prior art

1 invalidates the two claims of SynQor's '702 patent. Those
2 claims are valid, indisputably so.

3 But Vicor did not want to concede the same for
4 Claim 2 of the '190 patent. Its entire argument, though,
5 is based on improper hindsight, and you'll read the
6 instruction, and it talks about avoiding hindsight.

7 When Dr. Schlecht presented his bus converters and
8 IBA ideas to Cisco, HP, and other companies in 2000,
9 companies with highly trained engineers schooled in power
10 electronics, the approach was new to them. And they were
11 initially skeptical, as you heard. There was nothing
12 obvious about what Dr. Schlecht taught the industry and
13 claimed in his IBA patents.

14 Ignoring what happened in the real world, Vicor
15 tried to tell a fictitious hindsight tale that IBA was
16 invented by Dr. Steigerwald and not by Dr. Schlecht.

17 And, as I mentioned earlier, despite promising
18 that they would present video testimony from
19 Dr. Steigerwald, Vicor did not do so.

20 We only needed to ask Dr. Giesselmann one question
21 on cross-examination. His position, as he acknowledged,
22 was contrary to what Vicor itself has said to the Patent
23 Office about this patent claim. Dr. Schlecht and
24 Dr. Dickens both explained why one of skill would not have
25 made the fundamental changes to the Steigerwald system that

1 Vicor said one would make.

2 There is nothing obvious about Claim 2 of the '190
3 patent, so you should answer this question "no."

4 That brings me to the last question you will need
5 to answer before getting to damages, and that question is:
6 Was Vicor's infringement willful?

7 Well, it was. You should answer this question
8 "yes."

9 After the Court entered an injunction in the last
10 patent infringement suit, Vicor jumped in, to appropriate
11 for its own gain, the market opportunity that SynQor worked
12 so hard to create.

13 But, also, numerous Vicor employees, including two
14 vice presidents, knew in November of 2007 that SynQor was
15 suing 11 other bus converter suppliers and asserting the
16 '190 patent.

17 You would think Vicor would at least look at
18 SynQor's patents. But, as we can see again,
19 Dr. Vinciarelli thinks he is above worrying about other
20 people's patents. No reason for him to do a claim
21 analysis.

22 Vicor blinded itself to a known risk. That is
23 willful infringement.

24 Now, at this point, I'm going to hand things over
25 to the very capable Ms. Koh, who will discuss damages with

1 you.

2 I look forward to talking to you again during the
3 rebuttal.

4 Thank you.

5 MS. KOH: Good afternoon, ladies and gentlemen.
6 It's my honor to be able to address you on behalf of SynQor
7 on the question of damages in this case.

8 If we could turn to the next slide.

9 This is the damages question you'll be asked to
10 answer on the verdict form. And, unfortunately, because
11 the patents have expired, SynQor cannot regain the market
12 that it created. But you were instructed that if you find
13 Vicor liable for infringement, the minimum compensation
14 that a patent holder like SynQor should recover is a
15 reasonable royalty.

16 Remember, a royalty is determined by taking a
17 reasonable rate and multiplying it by the number of accused
18 products that Vicor sold to the seven customers at issue
19 here during the damages period.

20 And Mr. Reed told you exactly how to determine
21 that reasonable royalty. Depending on the product, he
22 explained you take either \$60 or \$80 and you multiply it by
23 the number of applicable units.

24 And this is done by applying the facts to a
25 concept called the "hypothetical negotiation." You've

1 heard a lot about that here.

2 And this simply means, assuming infringement and
3 validity, what a reasonable royalty -- what reasonable
4 royalty would the parties have negotiated had they sat down
5 and worked out a deal, aided by knowledge of key future
6 events.

7 And here was the evidence. Let's take a look.

8 Through licenses, settlements, or Court decisions,
9 the patented IBA technology has resulted in payments of
10 \$150 million to SynQor.

11 The authorization license agreements done to date
12 include 16 companies who paid an average of \$64 per unit to
13 SynQor for its patented technology.

14 Cisco settled its lawsuit with SynQor paying \$60
15 per unit for a total of \$22.25 million.

16 Other end customers, like HP, Fujitsu, and others,
17 paid similar per-unit amounts.

18 Cray paid SynQor \$65 per unit for a Vicor bus
19 converter. Vicor tried to explain that Cray deal away
20 yesterday by saying this wasn't an accused part, but that's
21 because Cray had already paid for Vicor's infringement
22 through its license with SynQor.

23 All of this evidence tells you the value of the
24 patented technology to the companies who needed it. These
25 are all facts that SynQor and Vicor would have had at the

1 hypothetical negotiation.

2 Both Mr. Reed and Mr. Ratliff told you that future
3 events could be considered, and you can and should consider
4 these facts when determining the reasonable royalty.

5 What else did we hear? You heard Mr. Hofmann tell
6 you that it was SynQor's licensing policy not to license
7 anyone else for less than what SynQor would expect to make
8 in profits if it had made the sales itself. That's what
9 SynQor really wanted to be doing.

10 These are all deals that SynQor did that included
11 the actual patents at issue in this case, and the royalty
12 rates determined by Mr. Reed are consistent with the profit
13 SynQor made when it sold its own unregulated bus
14 converters.

15 What did Mr. Ratliff, Vicor's damages witness,
16 have to say? He said, ignore all of these deals, ignore
17 all of the SynQor deals, and focus instead on deals that
18 Vicor did that are about completely different patents and
19 technology different from what's at issue in this case.

20 And what did Mr. Ratliff conclude? He concluded
21 that the appropriate rate would be 7.5 percent.

22 You know what that works out to on even the most
23 expensive products that Vicor sold? We did the math, and
24 it works out to about \$4.50 a unit. No one paid that in
25 the real world, and SynQor would never ever do that deal.

1 Mr. Ratliff then claimed that SynQor only got
2 these real-world rates because it had all of these
3 companies over a barrel. You heard that.

4 This is, frankly, nonsense. SynQor needed to
5 prove infringement and the value of its technology in
6 court, and it did that. SynQor would have absolutely no
7 incentive to give Vicor a better deal at the hypothetical
8 negotiation than what the end customers, including Cisco
9 itself, got.

10 Vicor would be negotiating on behalf of customers,
11 like IBM and Cisco, who really needed the patented IBA
12 technology.

13 As we've seen in this case, Dr. Schlecht's
14 technology was hugely important to IBM, Cisco, and others;
15 and all SynQor wanted was its normal profit from the sale
16 of its own bus converters, 60 to \$80 a converter.

17 It preferred to make the sales itself. That's
18 what it has wanted all along. But, at the very least, it
19 was entitled to a royalty to compensate it for the profits
20 it missed out on. These rates are fair, based on all the
21 evidence we've seen.

22 To determine the total damages, you simply
23 multiply these reasonable rates by the total number of
24 units that Vicor sold for over a decade. It's over 1.5
25 million units, which comes straight from Vicor's sales

1 records.

2 So when you're doing this calculation on the
3 verdict form, SynQor is asking you to award \$71,292,000,
4 because it is based on a fair rate supported by the
5 real-world evidence in this case.

6 If infringers like Vicor could get away with
7 paying only a very modest amount for all the damages that
8 they have caused, as SynQor -- as Vicor would have you
9 award, why have a patent system at all?

10 Why should companies invest in research and
11 development if other companies can take patented inventions
12 for their own use and then force the patent holder, who
13 prefers to commercialize it himself to grow his business,
14 to license the invention away on terms that provide no real
15 compensation at all?

16 Juries, like you, are truly indispensable to our
17 patent system. Only you have the power and authority to
18 compensate SynQor for the damage caused by Vicor's
19 infringement.

20 We're going to reserve the rest of our time for
21 rebuttal after Vicor presents their closing arguments, and
22 we look forward to speaking with you again shortly.

23 Thank you very much, ladies and gentlemen.

24 THE COURT: Mr. Pak?

25 MR. PAK: Thank you, Your Honor. If I could just

1 have a few minutes to set up.

2 THE COURT: Of course.

3 MR. PAK: Thank you.

4 May I proceed, Your Honor?

5 THE COURT: Yes.

6 MR. PAK: Good afternoon, ladies and gentlemen of
7 the jury.

8 First of all, I'd like to thank all of you for
9 paying very close attention to all of the evidence that
10 came in. And, as I told you, it's very important to us
11 that we have your honest opinion and feedback at the end of
12 this system.

13 Now, I want to make one thing very clear, this
14 case is not about me or any of the lawyers in the room.
15 This case is about the evidence, and it's about your job to
16 assess all of the evidence in this case and come to the
17 right conclusion. And I'd like to commend Mr. Rein and
18 Ms. Koh for their closing arguments, as well.

19 At the beginning of the case, I told you that
20 we're here for two reasons. We're here to clear our name
21 and protect the integrity of the work of Dr. Vinciarelli
22 and the thousand employees of Vicor who stood behind him
23 over 40 decade -- four decades of innovation.

24 We also told you that we want to protect the
25 integrity of the patent system, which is about promoting

1 science, promoting true innovation. And every right given
2 under the Constitution, including patent rights, has limits
3 and bounds. I'm going to ask all of you to take that into
4 consideration.

5 The other thing that I asked you to consider, as
6 you heard all the evidence, is: Who is doing the leading
7 and who is doing the following?

8 And there is no question now, having heard all of
9 the evidence, that it's been Dr. Vinciarelli and Vicor that
10 has led the entire industry every step of the way.

11 You heard from His Honor that two of the most
12 important tools that you will use in making your decision
13 at the end of the day is common sense. If something
14 doesn't sound right to you, it's probably not the right
15 answer.

16 Credibility of the witnesses. What have they said
17 in the courtroom that is different than what they said
18 before? What did they say on direct examination versus
19 what they said on cross-examination?

20 Those are very important tools that I ask all of
21 you to exercise.

22 I also want to make this very clear, I'm not going
23 to be filling out any boxes here today for you. I'm just
24 here to guide you through the evidence, ask you to consider
25 some of the important instructions from His Honor. We

1 trust you to make the right decisions, and that's why
2 you're here.

3 We've been waiting for a long time for this day to
4 have jurors like you make a declaration that we do not
5 infringe the SynQor patent claims.

6 You heard some about the 497 case. You heard a
7 lot about it during this trial. I just want to say a few
8 words about that.

9 This case is not about knock-off products from
10 companies that were following SynQor. This case is about
11 Vicor and its patented technology that was 6 times,
12 sometimes 10 times, better than anything that SynQor could
13 produce.

14 Whatever that jury decided is not the issue before
15 you, ladies and gentlemen of the jury. We're asking you to
16 consider all of the evidence, all of the arguments, and
17 make a decision for all of us here today. That's why we're
18 here.

19 If you remember, I quoted Mr. Robert Frost at the
20 beginning of my opening statement, and I think this
21 metaphor still holds true today after hearing all of the
22 evidence: Two roads diverge in a wood, and I took the one
23 less traveled by.

24 And that has been the story of Dr. Vinciarelli all
25 along. He and his company developed ground-breaking

1 technology that many thought was impossible to eliminate
2 switching losses, not just reduce them, but virtually
3 eliminate them, allowing them to go faster and smaller,
4 even to this day, than any other competing products.

5 And I want to make something very clear to you,
6 this is from the jury instruction at Page 14, you will find
7 this. His Honor told you that the comparison of the
8 accused products to SynQor's -- comparison of the accused
9 products to SynQor's products or to the Vicor patents may,
10 however, be relevant to issues concerning Vicor's intent to
11 infringe.

12 That's very important, because, as you've heard,
13 none of our products actually has all of the elements of
14 any claim. This is not a direct infringement case against
15 Vicor. This is a case about whether Vicor and
16 Dr. Vinciarelli intended others, intended others to build
17 infringing designs.

18 Intent is going to be a core element of every one
19 of the questions you will have to decide on liability. You
20 heard it from His Honor. I'm going to walk you through
21 some of those instructions.

22 So all of this evidence that you've heard about
23 Vicor's patents about the relative superiority of our
24 products, is highly relevant to the issue of whether
25 Dr. Vinciarelli intended to copy or use SynQor's patents.

1 And if he didn't, that means there was no intent.

2 And at the end of the day, it is SynQor's burden
3 to prove intent, and I don't think you've heard anything to
4 dissuade you otherwise.

5 Just on that one point, I think you heard just now
6 that somehow if there was no intent, Vicor would get off
7 the hook. I think what was meant by that is this issue,
8 that intent is very, very important to questions of
9 infringement before all of you, as you think about the
10 verdict form.

11 So what evidence have we seen? What evidence that
12 is not even disputed that all of the accused products come
13 from our patented SAC, Sine Amplitude Conversion (sic),
14 technology, that was so ground-breaking that it won the
15 Product of the Year when it was released, and it allowed
16 Dr. Vinciarelli to be inducted into the Hall of Fame and
17 receive the new award.

18 This was a hard path. It took hundreds of
19 engineers years of research and development to accomplish
20 this, and no one else had. And that's the reason why this
21 is relevant to this case. Common sense tells you if you
22 have far superior technology, why would you look backwards
23 and try to use someone else's patents or try to copy
24 someone else's technology?

25 It doesn't add up.

1 We saw proof that has never been disputed that
2 Vicor's patented technology, their Sine Amplitude
3 Conversion (sic) technology, allowed Vicor's products to be
4 far superior than anything that SynQor ever built.

5 In fact, when Dr. Habetler did an apple-to-apple
6 comparison in 2014, what did he find and present to you?
7 Six times better in power density.

8 That's what customers care about, how much power
9 can you deliver in what form factor. Six times better.
10 That tells you, again, why would Vicor copy a technology
11 that is six times worse, six times worse?

12 You also heard from Dr. Dickens, admit to you,
13 when Dr. Vinciarelli received his award and also when he
14 received these patents, the SynQor patent -- the original
15 SynQor patents, that Dr. Schlecht wrote to describe his
16 invention was before the Patent Office.

17 The Patent Office had a chance to consider
18 SynQor's patented technology and compare it to Vicor's, and
19 they still issued Vicor its numerous patents on the Sine
20 Amplitude Conversion (sic) technology.

21 And not only that, you heard evidence from
22 Mr. Covi that the reason why they were buying the VI Chips
23 back in 2004 all the way through 2014 was because of the
24 significant power density in Vicor's products through the
25 use of its patented technology.

1 So, again, we have customers telling us this
2 technology is ground-breaking. This is the reason why we
3 are buying chips.

4 One thing you've heard a little bit about in the
5 closing statements was IBA. And, just to be clear, we have
6 testimony from Dr. Schlecht, you heard him testify over and
7 over again that the concept of intermediate bus
8 architecture, all the limitations in the claims that talk
9 about having an intermediate voltage from a high voltage
10 and providing it through regulation stages, was not new.
11 It had been described in Steigerwald's patents long before
12 SynQor filed its patents.

13 That technology does not belong to SynQor. So
14 whether we intended our products to be used in IBA or not,
15 has no bearing on whether we intended to infringe their
16 patents.

17 IBA is old. IBA cannot be patented by SynQor, and
18 it was not the basis for why they claim that their
19 invention is new.

20 That's a hard road we took. What evidence have we
21 seen from SynQor on the path they took?

22 My partner, Mr. Nelson, is going to talk to you a
23 lot more about the prior art side of the case, but the only
24 thing I'll say here is that everything that has been grayed
25 out by stipulation, by stipulation has been found to be in

1 the Steigerwald reference, which means that the only thing
2 that SynQor can claim new is this short transitions time
3 limitation.

4 Now, you'll hear from Mr. Nelson that that is also
5 in the prior art and would have been obvious to do so. But
6 where it's missing is in virtually all of the products
7 through the stipulations you saw. Virtually all of the
8 products have transition times that are greater than
9 20 percent, not less.

10 In other ways, we see SynQor taking the easy road
11 here. How? We heard Dr. Habetler talk about the benefits
12 of SynQor's claimed invention as stated in their patent,
13 which was to use his cross-coupling architecture that
14 eliminated the need to have sophisticated controllers to
15 decide when to turn on and to turn off these transistors.

16 That is exactly what Dr. Vinciarelli focused his
17 invention on, how do you create more sophisticated
18 controllers that can turn the transistors on and off when
19 there are no power losses.

20 Instead, what we see in their patent is, we're
21 going to make these transition times smaller. Why?
22 Because they can't eliminate all the switching losses, but
23 we can try to minimize it or reduce it to lower the impact
24 on efficiency.

25 So, just to make it clear, they got rid of the

1 secondary controller in their examples in the patent. Why?
2 Because it was too complex to build. And, instead, they're
3 relying on these short transitions in order to reduce, but
4 not eliminate, switching losses.

5 What did the evidence illustrate to us? That the
6 easy road of getting rid of these secondary controllers
7 ultimately didn't pan out for SynQor.

8 And we can see it in their own files. This is
9 SynQor's Steve Mathis, SynQor regional sales manager, in
10 2004, just after we had come out with our VI Chip
11 technology using SAC.

12 And what did he say in that email? He said, we're
13 very concerned about the VI Chip. Were they concerned
14 because they were infringing SynQor's patents? No, they
15 were very concerned because Vicor's technology was far
16 superior. And it's exactly what the customers wanted. And
17 he was concerned because they were about to lose two sales,
18 two sales.

19 So, again, sometimes the best evidence in the
20 courtroom is what people said and wrote before they ended
21 up testifying here, and that's exactly the kind of evidence
22 that we presented to you.

23 Now, Mr. Rein talked about the integrity of the
24 patent system. We absolutely agree. I told you that is
25 the reason why we're here.

1 Remember, the Constitution provides the patent
2 system to promote science. To promote science. Not to
3 block other people's innovations. It is to promote science
4 by patenting the inventions that you have.

5 THE COURT: Mr. Pak, when you get to a good
6 stopping place --

7 MR. PAK: Sure.

8 THE COURT: -- we just need to take a short break.

9 MR. PAK: Oh, sure. I think I can pause right
10 here. This will be fine.

11 THE COURT: Is now good?

12 MR. PAK: Yes, Your Honor.

13 THE COURT: Okay. Ladies and gentlemen, we'll be
14 in recess about 10 minutes.

15 COURT SECURITY OFFICER: All rise.

16 (Jury out.)

17 THE COURT: My apologies, Mr. Pak. I got passed a
18 note that one of the jurors needed to use the restroom.

19 MR. PAK: Absolutely, Your Honor. No problem.

20 THE COURT: All right. We'll resume in just a
21 minute.

22 (Recess.)

23 (Jury out.)

24 COURT SECURITY OFFICER: All rise.

25 THE COURT: All right. Mr. Mitchell, if you would

1 have the jury brought up.

2 (Jury in.)

3 THE COURT: Please be seated.

4 Mr. Pak, you may continue.

5 MR. PAK: Thank you, Your Honor.

6 So we were talking about respect for intellectual
7 property of others. To have respect, as Mr. Rein mentioned
8 to you, for other people's patents and the contributions
9 that they made to science.

10 And we saw some disturbing things in the fall of
11 1997 in a business plan authored by Dr. Schlecht. And this
12 is DTX-93. So I'll have some exhibit numbers. These are
13 all exhibits going back to you.

14 He not only stated that SynQor has detailed
15 knowledge about the technical design of competitors, their
16 revenues, and patent positions; but he says: On
17 intellectual property -- the very first sentence -- besides
18 patenting its own inventive creations, SynQor will keep
19 abreast of its competitors' inventive work, inventive work,
20 and develop blocking patents where possible.

21 So this is Dr. Schlecht's business plan saying not
22 only are we going to patent our inventions, we're going to
23 try to develop blocking patents to cover and block other
24 people's inventions, inventions such as the Sine Amplitude
25 Converter technology that Dr. Vinciarelli invented and

1 patented.

2 And we'll go through this a lot more in detail,
3 but that is the reason why they're asking you to move the
4 fence and to capture what they told the world is not their
5 invention.

6 Less than 20 percent is not the same as 20 percent
7 or more.

8 To make this very clear, the reason why we're
9 talking about intent is this is an indirect infringement
10 case. It means, everything in blue here, Vicor does not
11 sell for the accused applications.

12 All of that in blue, including a DC power source,
13 two or more non-isolating regulation switches or stages,
14 which are switching regulators, all of that is done by the
15 customers at their choice. The customers decide how to
16 take our bus converters and put it into any configuration
17 that they like. We don't tell customers how to build their
18 products.

19 And we saw evidence of that. You saw the Lego
20 building block ad that Vicor ran many years ago talking
21 about we provide components for your solutions, for your
22 solutions, for solutions that IBM, Ciscos in the world
23 decide on their own to make.

24 Dr. Habetler provided you with numerous examples,
25 numerous examples when you directly tie the bus converter

1 to the load, or use just one regulation stage instead of
2 two more, as well as the FPA architecture. All of these
3 things are possible choices that customers can make.

4 And he presented you with technical evidence of,
5 not only how they work, but the fact that customers have
6 actually purchased those types of converters for those
7 types of applications.

8 And please don't be confused. This is not whether
9 the end customers have non-infringing uses. It's whether
10 our bus converters have substantial non-infringing uses.

11 And it's SynQor's burden to prove that there are
12 no substantial non-infringing uses. And we think the
13 evidence shows that, in fact, there are many non-infringing
14 uses. And all of these things that Dr. Habetler went
15 through are applications that even SynQor is not accusing
16 in this case.

17 Now, going back to the 497 case, after that case
18 resolved and impacted the customers, what did the customers
19 come to Vicor looking for? They were looking for a
20 non-infringing solution, a better non-infringing solution.
21 You saw emails from Cisco to that effect.

22 You heard Dr. Vinciarelli's testimony that he
23 collected technical information to share with those
24 customers to assure them that his solutions do not
25 infringe.

1 And, in fact, when he did the testing and looked
2 at products that had transition times of 25 percent or
3 more, which he ensured for everything that was being sold
4 to Cisco at the time, it actually improved the efficiency,
5 he understood what the SynQor patents were about, and he
6 took action to ensure that his products do not infringe.

7 That is the opposite of willful blindness that
8 Mr. Rein talked to you about. Willful blindness is putting
9 your head in the sand and not taking any action to
10 eliminate risk.

11 Here, Dr. Vinciarelli did the opposite. He
12 collected technical evidence. He compared what he knew
13 about his products to the SynQor patents, and explained
14 clearly to Cisco and every other customer that was
15 interested, we have a non-infringing solution based on our
16 own patented technology, which proves that he had a
17 good-faith and well-rounded, well-supported belief of
18 non-infringement.

19 And if that is true, ladies and gentlemen, that
20 means there was no intent to build infringing devices,
21 which is a critical element of every question of
22 infringement that you'll be asked to decide.

23 And Dr. Dickens admitted that. When he showed you
24 all these data sheets, the competitive analysis, all the
25 things that you heard about during his original part of the

1 presentation, when I asked him on cross-examination, he
2 said: I have no specific evidence, no specific evidence of
3 intent to infringe.

4 All those things were competitive benchmarking,
5 looking at how other companies provide their products to
6 benchmark Vicor's products and ensure that we were better.
7 No specific evidence of intent or infringement.

8 Why? For all the reasons you've heard about,
9 Dr. Vinciarelli invented zero-voltage and zero-current
10 switching, which eliminated all switching losses. He
11 obtained many patents. We've shown you the '186 patent
12 that specifically covers his inventions long before the 497
13 was even filed.

14 In fact, the entire industry understood this. You
15 saw all of the evidence, not only the electronic products
16 of the year, but his induction into the Hall of Fame. The
17 entire industry understood that his technology was
18 different, it was different than anything that existed
19 before it, including what was being described in SynQor's
20 patents.

21 And Dr. Schlecht admitted that. He said that
22 Vicor innovates.

23 So, again, I ask you to consider who is the true
24 innovator in the courtroom? Who is doing the leading, and
25 who is doing the following?

1 And Dr. Schlecht admitted to you that there is
2 admiration here, that he agrees Vicor innovates and
3 continues to this day.

4 I had Dr. Vinciarelli sit right there and look you
5 in the eye after considering all of the evidence, he's been
6 here throughout the whole trial, and I asked you to -- I
7 asked him to tell you point blank whether he had any intent
8 to infringe any of these specific asserted claims from
9 SynQor.

10 And he told you that will be nonsense because --
11 not because he didn't respect their intellectual property,
12 but because he understands what those claims are about.
13 And he knew that they were about setting these short
14 transitions and using an in synchronization technology to
15 reduce, but not eliminate, switching losses. And he told
16 you that his technology was far, far ahead and different.

17 And as you heard from His Honor's instruction, you
18 don't need written counsel's opinion; you don't need a
19 letter from a lawyer.

20 If you have somebody with Dr. Vinciarelli's
21 experience and he can collect technical information to
22 confirm his belief of non-infringement, which he shared
23 with Cisco's and the other customers, that is sufficient to
24 establish good-faith belief of non-infringement. That's
25 exactly what the record shows here.

1 And Dr. Dickens confirmed that, that nothing that
2 he looked at provided any type of evidence of specific
3 intent to infringe with respect to competitive analysis,
4 the reverse engineering, the data sheets, all of that that
5 you heard so much about during his direct examination.

6 So on this question of intent, I want to focus on
7 Question No. 1, which is the first question that you'll be
8 asked to decide, which is on induced or contributory
9 infringement. And you can see that there'll be claims
10 listed for the two patents at issue.

11 And the jury instruction at Page 17 will tell you
12 the legal guidance from this Court.

13 And what I want to point out here is the mere
14 knowledge of possible infringement by others does not
15 amount to infringement (sic). SynQor must prove that Vicor
16 acted with specific intent to cause acts that constitute
17 direct infringement and must have known, must have known
18 that its actions would cause direct infringement or high
19 probability of having that type of result.

20 And you saw the opposite. You saw Dr. Vinciarelli
21 sharing technical information based on his own
22 understanding of SynQor's patents and Vicor's products,
23 believing that he never infringed those claims and those
24 patents, and sharing that technical information with
25 customers.

1 There is nothing wrong with selling a
2 non-infringing better solution to customers where in need.
3 And that's precisely what Vicor did.

4 And if you find that, then that means that SynQor
5 has not satisfied its element of proving indirect
6 infringement either through inducement or through
7 contributory infringement, which is at Page 18 of the jury
8 instructions.

9 Furthermore, on contributory infringement, they
10 have the burden to show that these types of components had
11 no substantial non-infringing uses. They simply can't
12 prove that. Why? Because off this intermediate bus, for
13 example, you could directly link it to a link -- to a load
14 or you could use just one isolation regulate --
15 non-isolating regulation stage, which means that you're
16 outside the claims.

17 And we've seen evidence presented to you of those
18 types of applications. And at the end of the day, it's the
19 customer's choice, not Vicor's.

20 If you remember when Mr. Reed presented to you his
21 damages number, a big portion of that was foreign sales, so
22 sales that occur outside the United States.

23 And there's a specific instruction on that, as
24 well, which is on Page 19. And you will see, that in order
25 to capture foreign sales that are happening outside the

1 United States, they have to show no substantial
2 non-infringing use, and Vicor knew that its product would
3 directly infringe the SynQor's patents.

4 So everything I presented to you and everything
5 you've considered on that point, if SynQor hasn't met the
6 burden of intent, they're not entitled to foreign sales.

7 And, finally, Vicor -- they need to show that
8 Vicor intended those combinations to occur, what they say
9 infringe, outside the United States.

10 That's purely the customer's choice whether they
11 assemble those outside the United States or inside the
12 United States. No proof of these intent elements being
13 satisfied here.

14 Finally, just a little bit on willful
15 infringement. That's an even higher burden that SynQor
16 would have to prove to show that our actions were willful
17 in terms of infringing their patents.

18 And His Honor has already told you at Pages 19 and
19 20, that the infringement by Vicor must be intentional.
20 You may not determine that the infringement was willful
21 just because Vicor was aware of the patent and infringed
22 it. You must find that Vicor deliberately infringed the
23 patent.

24 And for all the reasons I shared with you and the
25 evidence you've seen, there is no evidence of willful

1 intent.

2 Mr. Nelson is going to talk to you more about the
3 damages claim in this case. But I do want to point out
4 that they're asking for \$71.2 million for money damages.
5 And I'm going to walk you through how they're trying to
6 support each slice of the \$71.3 million pie, as it were.

7 So this is their reasonable royalty ask, they're
8 asking you to award \$71.3 million to SynQor.

9 Now, for the three products that we've heard so
10 much about, 002, 2C, and 14, which were sold to IBM, they
11 constitute \$33.7 million of that, products that were never
12 tested, that were never analyzed, no waveforms shown.

13 And what did Mr. Montminy tell you? That those
14 products were tuned, tuned -- or, actually, the later
15 versions of the VIZ, two products were tuned to be just
16 like these and use a tuning capacitor to accomplish that.
17 And those later products for which we have test results,
18 all show transition times that were greater than 20
19 percent.

20 And so without actual waveforms, without testing
21 results, how does SynQor try to categorize these VIZ2, 2C
22 products -- 14 products to be in the category of less than
23 20 percent?

24 Well, they rely on Dr. Leeb's testing and
25 hypothesis. Remember, Dr. Leeb never tested these parts.

1 And, instead, they say Dr. Leeb grouped these
2 together because they happen to have the same bill of
3 materials, a list of parts, and the same schematics.

4 And then using that, they have now linked it to
5 another product, I'll just call it the B352 product, which
6 had no sales during the damages period.

7 So they're grouping the products that had the
8 largest amount of sales with a product that did not have
9 sales during the damages relevant period.

10 How do they do that? Well, we will never know
11 because Dr. Leeb chose not to testify.

12 The expert that actually did the grouping, the
13 expert that actually did all of the testing, he did not
14 testify. Voluntarily he chose not to come here.

15 So we'll never be able to know through
16 cross-examining -- cross-examination exactly why he grouped
17 it this way or what happened with respect to the testing.
18 He chose not to testify here.

19 Instead, the evidence that we did present to you
20 through the cross-examination of Dr. Dickens proved that
21 Dr. Leeb's hypothesis was wrong. Why? Because, remember,
22 they were saying just because you have the same bill of
23 materials, the same schematics, you would expect to have
24 the same exact transition times.

25 And what did the evidence show you? That you have

1 two products for which they were tested, and those products
2 had transition times that were 14 percent different,
3 14 percent different, not exactly the same, despite having
4 the same bill of materials and the same schematics.

5 And Dr. Dickens told you that if the hypothesis
6 was wrong, he would have to revise it or come up with
7 something new. But he never did that, despite the fact
8 that he had all this evidence in his possession, which
9 showed that Dr. Leeb's methodology or hypothesis was simply
10 wrong.

11 And, just to be clear, I want to remind the jury
12 what he said when he took the stand the first time. He
13 said the reason why you say these three parts, VIZ2, 2C,
14 and 14, would have exactly the same transition time that
15 was measured for the B352F11T30 is because they have the
16 same bill of materials and the same schematics?

17 Answer: That's part of my analysis, that's
18 correct.

19 Answer (sic): That's what you presented to the
20 jury, correct?

21 Well, that's what I presented. That was part of
22 my analysis.

23 So he told you when he took the stand when I was
24 asking him, that's exactly the same, down to point --
25 17.6 percent. Exactly the same. That's what he said the

1 first time he took the stand.

2 And when confronted with all of this evidence of
3 the methodology variations and that the hypothesis was
4 wrong, what did he say in response to Mr. Nelson's
5 questions at the end?

6 Well, there is a variation, so it's not exactly
7 the same. In fact, that 14 percent means that there's an
8 absolutely difference of 3.4 percent.

9 And Dr. -- Mr. Nelson pointed out that if you take
10 that 17.52 percent difference -- that transition time and
11 add 3.4, that would take you beyond 20 percent, which means
12 even that product that they claim is below 17 -- below
13 20 percent, if you add this variation, you will no longer
14 be below 20 percent.

15 The hypothesis was simply wrong. That is not
16 reliable, not scientific, it's not a valid basis to group
17 together products that were never tested when SynQor had
18 the opportunity to do that.

19 THE COURT: Mr. Pak.

20 MR. PAK: Yes.

21 THE COURT: You've used 30 minutes.

22 MR. PAK: Thank you.

23 So we talked about that big chunk of the pie,
24 33.2 million.

25 Let's talk about the remaining slice of their

1 damages ask, that is purely based on Doctrine of
2 Equivalents.

3 So they admit that none of these products infringe
4 literally the claims. They're asking you, the jury, to
5 apply what's called "Doctrine of Equivalents."

6 But that Doctrine of Equivalents has very specific
7 requirements, and if they're not satisfied, they're not
8 entitled to move that fence. And that constitutes
9 \$37.5 million of the damages ask.

10 And, on this point, Dr. Dickens actually used a
11 function-way-result test. The function, he said, is
12 minimizing switching losses but not eliminating them
13 completely.

14 And what do we find even in the deposition
15 transcript that Dr. Dickens relies on? We, Vicor, don't
16 have any switching losses. So their patent function is
17 about reducing, but not eliminating, switching losses. Our
18 products eliminate them altogether.

19 And I asked Dr. Dickens exactly this question:
20 Having some switching loss that cannot be eliminated but
21 reducing them is different, different than not having
22 switching losses at all, correct?

23 He said: Yes.

24 This means that his claimed function does not even
25 apply to the accused products that have no switching

1 losses. He admitted this.

2 And if the function is missing, you don't even get
3 to the rest of the Doctrine of Equivalents.

4 Mr. Nelson also had a chance to ask Dr. Schlecht,
5 the inventor and CEO of SynQor, this exact question. And
6 I'm showing you on the left what I asked Dr. Dickens.

7 So according to the SynQor patent, you have the
8 short transitions -- that's the only thing that we're
9 talking about here -- relative to the on and off-state,
10 while you're switching the synchronous rectifier, you're
11 burning power. So the reason why you have short
12 transitions is to reduce the power that is being burned or
13 wasted while you switch?

14 At first he said: In some of the embodiments,
15 that's absolutely true.

16 And then I asked him: That is, in fact, the
17 function of the minimizing switching losses that you're
18 talking about here in the DOE analysis?

19 And he said: Yes, that's correct.

20 But when Mr. -- Dr. Schlecht was asked, he said:

21 Question: So the reason why you have the short
22 transitions in terms of the relative to the on and off
23 state is, because while you're switching the synchronous
24 rectifier, you're burning power, right?

25 No, that's not the reason for the language.

1 That's not the reason for the language.

2 So Dr. Dickens used the function that Dr. Schlecht
3 says is not the reason for his invention.

4 So setting aside the fact that we don't do this
5 function, what this shows is that, under Dr. Schlecht's
6 view of his invention, Dr. Dickens just got the function
7 wrong.

8 And, again, they can't agree on the function, and
9 whatever function that may be is different than eliminating
10 switching losses altogether.

11 And whose burden is it to prove DOE for that big
12 chunk of the pie? That's SynQor's.

13 In terms of the way, we had Dr. Dickens say that
14 he hasn't seen any of their products use Sine Amplitude
15 Conversion technology to eliminate zero -- to eliminate
16 switching losses. And yet we presented you significant
17 evidence in this case, and Dr. Dickens admitted that all of
18 the accused products use SAC to accomplish zero-voltage and
19 zero-current switching.

20 And don't be confused by what -- what's shown to
21 you about there may be some tiny loss that is not
22 eliminated. That's true with every product. You can't get
23 down to zero exactly. But, for all practical purposes,
24 it's zero-voltage and zero-current switching.

25 Dr. Dickens admitted that, and I asked him again:

1 Let's talk about that. Minimizing and having none is
2 different?

3 He said: Yes.

4 So using SAC technology to eliminate switching
5 losses is a different way of operating converters than the
6 claimed function and way of reducing but not eliminating
7 the losses.

8 Again, they fail on the way test as well.

9 On the results, the testimony couldn't be clearer,
10 Dr. Dickens said that, according to his result, what he
11 would expect to see is that as you increase the transition
12 time, you would have more losses, more switching losses,
13 and, therefore, the efficiency number would go down.
14 That's what he said during trial.

15 But we heard from Dr. Vinciarelli testimony that
16 Dr. Dickens adopts and says that's true. Dr. Vinciarelli
17 made the transition times longer in his products, made it
18 25 percent or more, and his efficiency numbers went up.

19 So we have opposite result. According to their
20 patent, you reduce the switching losses by making those
21 transition times shorter. When Dr. Vinciarelli increased
22 the transition time, our efficiency numbers went up.
23 Totally different results.

24 And, just to remind you, according to His Honor's
25 legal instruction, even if any one of these elements,

1 function-way-result, is missing, SynQor has not met its
2 burden under the Doctrine of Equivalents.

3 Dr. Dickens also did what he called insubstantial
4 difference test, and this is the only slide he presented to
5 you on that. And he basically said, for all the same
6 reasons I talked to you about before, it's insubstantially
7 different. And we went through how his DOE analysis
8 doesn't work.

9 Furthermore, he just did the wrong math. He
10 pointed you to the 6.25 percent difference. But as
11 Dr. Habetler explained, what he was describing was the
12 comparison of non-transition times to other non-transition
13 times, while the claim language is focused on the
14 transition times themselves.

15 Dr. Habetler did the right math, 25 percent
16 transition time compared to 20 percent transition times,
17 that's a 25 percent difference. That is not insubstantial.
18 No one, whether we're talking about taxes or the cost of
19 gasoline, is going to say that 25 percent increase is the
20 same as having no increase.

21 But that is the entirety of Dr. Dickens's case on
22 DOE.

23 The patent system was created to promote science.
24 That's written into the Constitution.

25 We saw that, when confronted with the evidence of

1 the business plan, Mr. Hofmann said the exact opposite. He
2 said, I don't believe that is the function. To keep
3 abreast of competitor's inventive work and write patents on
4 that, he didn't see a problem with that.

5 We respectfully disagree. The Constitution did
6 not create the patent system to allow other people to
7 monitor other people's inventive work and draft patent
8 claims to block them.

9 Dr. Vinciarelli respects intellectual property.
10 He obtained patents on his own work. And he actually
11 disclosed as part of that process SynQor's older patents --
12 patent applications that actually described the technology
13 at issue. Despite that, the Patent Office granted a patent
14 to Dr. Vinciarelli.

15 Just to remember some of the testimony from
16 Mr. Nelson's cross-examination, Dr. Schlecht wrote the
17 patent description, the specification.

18 Remember, it was the lawyers who drafted the
19 claims. And that's the reason why the '190 and the '702
20 patent issued so much later than the original patent,
21 because the lawyers wrote the claims, Dr. Schlecht wrote
22 the specification.

23 It's not us asking you to disrespect the
24 intellectual property system of this country. It is SynQor
25 that is asking you to move the fence and ensnare

1 Dr. Vinciarelli's patented technology, even though
2 virtually all of the products that were actually tested and
3 stipulated to had transition times greater than 20 percent.

4 And the only way they can move that fence was
5 through a DOE analysis that does not add up and contradicts
6 the sworn testimony of Dr. Schlecht.

7 We were entitled to rely on that fence. They said
8 that our invention is about less than 20 percent. And
9 there's been no evidence presented that would suggest that
10 that fence should now be moved so -- to support a patent
11 damages verdict in excess of \$72 million.

12 So, really, once you take the three products that
13 were never tested, you take out the products that they're
14 claiming under DOE, you're down to \$236,478.

15 That's what Mr. Reed testified to during
16 cross-examination, that even by his royalty rates, if you
17 take out those two categories, we're down to \$236,478.

18 And even on that slice of the pie, they still had
19 the burden of proof to prove to you that the in
20 synchronization limitation is satisfied for all the
21 products, including that slice.

22 And this is in His Honor's claim construction
23 order to you. It says the CRs -- those are the power
24 switches or MOSFETs that we're talking about on the
25 secondary side -- they are on when their gate voltage

1 crosses the threshold voltage. The threshold voltage.

2 And we saw testimony from Dr. Schlecht describing
3 this. Dr. Schlecht, in response to questions from
4 Mr. Nelson, said: So as you raise the gate voltage up to
5 the threshold and start going above it, the transistor's
6 channel starts to turn on at that point.

7 It starts to turn on. And he says: Until you get
8 to the threshold voltage, the channel is off.

9 And that's exactly what Dr. Habetler was
10 describing to you with the cattle fence analogy, as
11 reflected in the claim construction order.

12 You don't start the process of turning on until
13 you cross the threshold voltage. And it is SynQor's burden
14 to show you where that start -- that process starts, by
15 pointing out the specific threshold voltages in each of
16 these products.

17 And there's a complete failure of proof here. Of
18 the five categories of representative products that you
19 will see in the stipulation, three of them, they never
20 showed you any actual waveforms.

21 For two of them, where they showed you the
22 waveforms, he never identified -- Dr. Dickens never
23 identified any threshold voltages. Despite the fact that
24 these threshold voltages are published in data sheets that
25 anyone can obtain, he didn't show you any threshold

1 voltages. They failed to meet their burden of showing in
2 synchronization.

3 So, with that, ladies and gentlemen, I'm going to
4 turn over to my partner, Mr. Nelson, who is going to talk
5 to you about some of the other issues in this case.

6 THE COURT: 18 minutes.

7 MR. NELSON: 18 minutes. Thank you very much.

8 Good afternoon, everybody.

9 So let me talk to you about the invalidity in this
10 case. That's where I want to start.

11 You heard from Dr. Giesselmann on this. And we're
12 talking about Claim 2. That's what we're focused on, Claim
13 2 of the '190 patent.

14 And this is an interesting case, right, because,
15 typically, you go through and there's a lot of disputes and
16 everybody is saying, well, this isn't here, that's not
17 there. We're really only talking about -- and, remember,
18 this -- one thing. That's it, one thing, and that's the
19 short transitions.

20 So you're going to have this when you go back.
21 You're going to have DTX-1078 and 1080, that's the
22 Steigerwald reference. We have a stipulation. That's all
23 one reference, you look at that.

24 Go back, you look at Figure 9, Dr. Giesselmann
25 walked you through all of that. He told you, he told you

1 how somebody of ordinary skill in the art, told you what
2 that was, his students. This man teaches this every day.
3 This is his life. That's what he does. He's very familiar
4 with what people of ordinary skill in the art would know at
5 that time.

6 And he walked you through, and he told you how
7 they'd look at it, how he taught them to do it, and what
8 kind of things they would know.

9 He also talked to you about the Pressman reference
10 and showed you Figure 3.4(B), right? That's on Page 97 of
11 the exhibit. You'll have that back there. It's DTX-28.
12 It's Page 82 of the textbook. One is a PDF, so the
13 numbering is a little bit off, but you'll have that back
14 there.

15 And you'll see in that, as Dr. Giesselmann told
16 you, is that shows the intermediate bus architecture right
17 there.

18 So, now, what's our question? The question that
19 we have, the only thing that SynQor doesn't agree is, does
20 Steigerwald show the short transitions?

21 That's it. That's the only thing that they say is
22 new. And that's what we're talking about in this
23 obviousness analysis.

24 And I was listening carefully as the Judge read
25 his instructions, and I'm sure you all were, as well.

1 You'll have those back there. The Judge will give those to
2 you. You'll have them back there.

3 The obviousness instruction goes from Page 21 to
4 26, right at the top of 26. I invite you to look at that,
5 read that. Because what you'll see is the things that
6 you're supposed to consider are exactly what
7 Dr. Giesselmann did, what he walked through.

8 He told you what's in the prior art, what's there,
9 what do people of ordinary skill in the art know, how would
10 they view this, talking about Figure 9, when they looked at
11 it.

12 So when you go back there, think about that
13 testimony and think about what you heard.

14 The other thing I want you to think about is,
15 there was one question on cross-examination. I think
16 counsel for SynQor addressed that in their part of the
17 opening statement. One question. What was that one
18 question?

19 That one question asked you, this jury, to defer
20 to the Patent Office. Patent Office already found it, you
21 know. They've already determined that Steigerwald doesn't
22 have the short transitions. They said Vicor said this.

23 You know what? They're talking about the other
24 embodiments. That's what they showed you, those questions.
25 And remember when Dr. Giesselmann told you that you don't

1 have to have all embodiments that meet the claims, you only
2 need one.

3 So rather than come up here and ask
4 Dr. Giesselmann about -- cross-examination questions about
5 what he was presenting, they asked him cross-examination
6 questions about what he wasn't presenting.

7 It's an attempt to confuse. It's an attempt to
8 ask you not to do your jobs here. And that's what our job
9 is as lawyers is to bring you the facts. His Honor gives
10 you the law, and you go back and apply those.

11 It's not our job to try to obscure things. It's
12 not our job to try to confuse you. It's not our job to
13 tell you what box to check. It's our job to bring you
14 those things so that you can make those decisions, and
15 that's what we tried to do here.

16 So we know short transitions is all we're talking
17 about.

18 Now, again, Dr. Giesselmann explained exactly why
19 even that is disclosed in the Steigerwald reference.
20 Square waves, that's the most straightforward way to drive
21 this. People would know that. They would do it, right?

22 And, in fact, let me just pause for a moment. So
23 what does that tell us and what does this stipulation tell
24 us?

25 It tells us that, even SynQor agrees that

1 everything in that claim -- we're talking about Claim 1,
2 first of all, because that's the first thing we have to get
3 through -- is old, except for the short transitions.

4 Right?

5 Everything's disclosed. That's what Dr. Dickens
6 says. But then later, during the questioning, where I was
7 asking him questions yesterday, he actually told me that
8 short transitions are not even new. So even those are old.
9 Right?

10 And you'll see in the Judge's instruction when you
11 go back for obviousness, you're not left to just look at
12 exactly the words of these references. You can consider
13 the knowledge of one of ordinary skill in the art, right?
14 You can consider what they would know, what they would
15 understand when they look at these things.

16 Dr. Giesselmann teaches these kind of people every
17 day. He sat in that witness stand and he took an oath and
18 he told you exactly what they would understand when they
19 looked at this. They didn't ask him any questions about
20 that, not a single question. Instead, they only asked you
21 to defer.

22 Now, what else do we know is not new? Switching
23 regulators, that's not even a serious debate, whether you
24 use switching regulators or linear regulators. Everyone
25 agreed, Dr. Schlecht agreed the very first day. That's

1 just a design choice.

2 And you'll see in that obviousness instruction,
3 design choice isn't patentable. That doesn't give you the
4 right to a patent and exclude others.

5 Now, what else did we learn that first day? So
6 remember, His Honor said at the very beginning that that
7 specification of the patent is supposed to teach someone
8 what the invention is, how to do it, and how to make it,
9 right? We heard that. And that'll be in your definitions,
10 the glossary at the end in your jury instructions again.

11 And when I walked Dr. Schlecht through his
12 specification, you remember I went through every single
13 figure, and he told me, this doesn't show IBA, this doesn't
14 show IBA. We got through all 10 figures. Nothing was
15 there.

16 We went through the patent, the description. You
17 know what we found? We found two sentences, and I -- we
18 went through this a long time. Remember, I asked him a lot
19 of questions, and maybe at the time, we didn't really
20 understand why. That's why.

21 And what did he say? I only -- you don't need
22 much because it's -- one of ordinary skill in the art knows
23 these things. So if you don't need much to describe it, it
24 can't be that hard, right? If it's not that hard, that's
25 the definition of obviousness.

1 Now, where does that leave us? See, I'm here, I
2 have to talk about damages, as well, not because I want to.
3 I'm the Defendant. You know what I think the damages
4 should be in this case. But that's not my job, right?

5 My job is to bring you the facts. That's my
6 opportunity to do it, and this is what I'm going to do.
7 I'm going to try to put this into some context now.

8 You know what the other thing -- and I think
9 Mr. Dacus made this point when we were asking questions to
10 select the jury the first day. Sometimes when you look at
11 what people ask for in damages, you can use that to judge
12 their credibility. How far will they go to make that
13 number as big as they can make it, right?

14 Now, there's going to be an instruction -- this is
15 at 31. This is apportionment. And the way I like to think
16 of this instruction is you got to separate out what's old
17 from what's new.

18 In other words, here, what is -- you can do
19 everything that is in that patent. We all agree. And if
20 you don't do the short transitions, you don't infringe,
21 right?

22 So you have to figure out what's the value of that
23 short transition versus something that doesn't have the
24 short transition.

25 Now, here, with their infringement claim, it

1 doesn't seem like the short transitions are a big deal
2 because they're saying, awe, if it doesn't have short
3 transitions, meaning less than 20 percent, it's all the
4 same, right?

5 So when we're looking at this with this
6 apportionment, we got to factor all that out. He doesn't
7 get paid for IBA. He doesn't get paid for this switching
8 regulation. You get paid only on the improvement that you
9 brought. That's what this instruction is.

10 And we didn't hear any testimony about that at
11 all. We heard nothing. Instead, what we heard was
12 Mr. Reed, \$71.3 million.

13 And what did he base that \$71.3 million on? I
14 don't think anybody has a disagreement on it. We heard it
15 from counsel during their part of the closing argument.
16 What did they say? That's based on the profits SynQor
17 would have made if they made all those sales. That's what
18 they said. \$60 and \$80.

19 Now, we know they gave you those agreements when
20 there was an injunction and those kinds of things, and
21 people were over a barrel. They needed to deliver, right?
22 But what does His Honor's instruction say about whether we
23 can -- that's even a proper measure?

24 Here it is. This is at Page 27. And you'll see
25 right here: Although SynQor's anticipated lost profits may

1 be considered to determine a reasonable royalty under
2 several of the reasonable royalty factors -- and you'll
3 have those in your instructions, and you can go back and
4 look at those, and I invite you to look at all of these
5 instructions, but what does it say explicitly -- the law
6 does not authorize the direct setting of the reasonable
7 royalty in the amount of SynQor's lost profits.

8 It doesn't allow it. So when they brought
9 Mr. Reed here, they put him up on the stand. They gave you
10 testimony about what these damages are based -- and said
11 over and over and over again, this is what SynQor's lost
12 profits would be.

13 Can't do that. His Honor said we can't do that.
14 So we know what they brought you is wrong.

15 And what else do we know? Because, remember --
16 what are we supposed to do here with this?

17 And before I go too much further, I just want to
18 reiterate with this, I don't like this part, but I don't
19 get to check the box. That's not my job. I don't get to
20 tell you what you should do. I only get to arm you with
21 the facts that you may or may not need.

22 I hope you never get to this question, but if you
23 do, I want to give you some context.

24 So what do we have here? We have a hypothetical
25 negotiation. You heard that term a lot of times, but let

1 me just explain what that basically is.

2 That means you have you a willing person that
3 holds the patents, we call that the licensor, and you have
4 a willing person that sells products that wants to take a
5 license, we call that the licensee. And they're going to
6 sit down at a table, and they're going to negotiate a
7 reasonable deal.

8 Now, you have all those factors, and you'll have
9 those in your jury instruction. I think there were 15, and
10 they talked about it. But that's basically, here are
11 things that you would consider, but it's got to be
12 reasonable. All these things are reasonable, right?

13 We know from His Honor's instruction it can't just
14 be you need to give me whatever money I would have made.
15 That's just wrong, right?

16 But what else do we know about this? These fact
17 are undisputed.

18 So Mr. Reed says \$71.3 million, that's what SynQor
19 is asking you for. We know that the total that Vicor sold
20 these products for, the accused products, 58 million. And
21 we know the total profit on those was 13.2 million. Those
22 are the things we know. These are not disputed.

23 So what SynQor is telling you and what Mr. Reed
24 told you, aside from telling you something that His Honor
25 has said is absolutely not allowed by the law, he's telling

1 you that Vicor would have sat down at the table with SynQor
2 and said, you know what, I'll pay you \$71.3 million for the
3 privilege of making 13.2 million, right?

4 I don't think that's reasonable. I don't think
5 anybody would do that, pay more to make less. It does not
6 make sense.

7 And when you're going back and you're judging the
8 credibility, you got to think about these things, right?
9 Is the goal to get the number as big as you can, or is the
10 goal to give you the facts and the evidence that you need
11 to do your job?

12 So with that, you've heard from our side, and
13 you've heard the facts. At least I've tried to present you
14 the facts. Maybe some of my questions were not as clear as
15 they might be, but I tried. Mr. Pak tried.

16 We respect your job, right? We filed this case
17 initially, right? You heard that. We wanted to come and
18 clear our name. It's important to us. We wanted to come
19 and protect the integrity of the patent system, right?

20 Now, you've heard, well, we're not challenging the
21 '702 validity. But you know what, His Honor said we have
22 limited time, and you know what's important about the
23 validity challenge that we've made here, aside from the
24 fact that that patent -- Claim 2 of the -- that '190 patent
25 never should have issued, it shows you they told you those

1 claims in the '702 patent, they're basically the same.

2 It's all the same.

3 So it shows you the value there. It shows you
4 what's not new. It shows you what they can't be paid on.
5 It shows you what they've stipulated and said, it's not
6 new.

7 So when you go back, think about these things,
8 look at those instructions, think about the facts that
9 we've brought to you, and think about Dr. Vinciarelli,
10 right?

11 Dr. Vinciarelli has sat here the entire time. And
12 he sat up on that witness stand, and he told you about how
13 he started this company. He told you about all the things
14 he did to build this company. He told you that he didn't
15 rest on his laurels, that he kept pedaling because he
16 always wants to be ahead.

17 And you've heard the undisputed facts, how Vicor
18 has taken this thing that was at about 1-watt per cubic
19 inch when he got into it up to 30,000 in some products now.
20 That's incredible innovation.

21 So that's something, when you go back there, I
22 hope you think about and I hope you consider because that's
23 relevant to so many of the questions that you need to
24 answer, but it's also relevant to the process and why we're
25 here.

1 We've tried to respect this process. We've tried
2 to bring you what it is you need. We've tried to tell you
3 the context for the facts and how they fit into the law,
4 and it's important.

5 And when you go back there -- I'm not going to be
6 able to get back up. Mr. Pak is not going to be able to
7 get back up. We don't get to talk anymore.

8 Now, at some point, that has to end, right? We
9 all -- we all understand that, and y'all have your lives
10 that you need to get back to. But don't think that we
11 don't have a response. Don't think that we don't have
12 something to say.

13 And when you go back there, think about what we've
14 done, think about how we've conducted ourselves, think
15 about the facts that we've tried to bring you and the
16 arguments that we've tried to make.

17 And when you go back in that jury room, this is
18 your decision, right? This is something that in the United
19 States of America we have the privilege of doing. They
20 don't do these in any countries anymore, jury trials like
21 this. They don't do them. We do them. It's right there
22 in our Constitution.

23 This is important to us. It's important to the
24 process. It's important to Dr. Vinciarelli. And we trust
25 the decision you make.

1 And thank you very much for your time.

2 THE COURT: Thank you, Mr. Nelson.

3 Mr. Rein?

4 MR. REIN: Thank you, Your Honor.

5 They said that they wanted to bring you the facts.
6 If that is what they wanted, why did they fight so hard to
7 keep us from giving you a summary of all the tests and the
8 proofs? Remember, they wanted us to read part numbers to
9 you, read them out loud and not provide you a summary?
10 That was a waste of time. They just wanted to take up --
11 have us consume our time reading parts to you.

12 And why -- if they were sharing the facts with
13 you, why didn't Vicor share with you a single test of the
14 products and test results? Not one. They all came from
15 SynQor.

16 They don't want to share the facts. And by the
17 way, Mr. Pak just tried to explain -- argue to you when the
18 process for turning on controlled rectifiers begins.

19 They had an expert on the stand. They didn't even
20 ask him. He wouldn't have agreed with Mr. Pak. You will
21 see that there's an instruction that what the attorneys say
22 is not evidence. You need to follow the evidence.

23 And Dr. Dickens, he explained to you that the
24 process for turning on the controlled rectifiers starts
25 when the voltage rises above zero and starts working its

1 way up to the gate voltage. Mr. Pak just made that up.
2 There's nothing in the record to support what he just said.

3 They're not trying to share facts with you.
4 They're desperate.

5 Invalidity, Vicor's attorney just made an
6 incredible argument. He suggested that Dr. Giesselmann
7 could explain away the inconsistent positions that he and
8 Vicor have taken in different forms, one to the Patent
9 Office where the opposite position was taken and one to
10 you.

11 And what he said was that, Dr. Giesselmann, he
12 could have explained that away if we had just asked another
13 question.

14 Well, guess what? Their own attorneys had the
15 opportunity to follow up and ask another question on
16 redirect if they thought it could be cleared up. It
17 couldn't. So instead, they just argue about it in front of
18 you. No facts, no testimony.

19 Now, this is really a damage case. They really
20 have no defense to liability. And I'm going to come back
21 to that in a minute. But because it is a damage case, I'm
22 going to spend a few moments to talk to you about damages.

23 Vicor makes much of Mr. Reed's royalty rate being
24 higher than the revenue that Vicor made off of its bus
25 converters, but they are conveniently leaving out some very

1 important facts.

2 The patented invention here is not just about
3 Vicor's bus converter. It is a load board with Vicor's bus
4 converter installed on it using an IBA architecture. The
5 IBA system includes a power source that powers the bus
6 converter and downstream switching regulators that are
7 powered by the bus converter.

8 All that has to be combined on the customer's load
9 board, and that is done and induced by Vicor. But the
10 complete IBA system includes these other components. Vicor
11 just sells one part, and it induces the customer to then
12 use it in an IBA system, which is why they're liable for
13 infringement.

14 Without this IBA system, the end customers would
15 have been unable to sell their extremely high-priced
16 products without sacrificing space for all the logic
17 circuitry that was needed.

18 It's the space savings that was extremely valuable
19 to them. You heard about that. The value of this
20 invention, the patented invention, is not just a part of
21 the profit that -- on Vicor's bus converter. The value was
22 related to the space savings that it proved efficiency
23 gives more value to the end customer.

24 And remember, Vicor would be paying not only for
25 the benefit it gets from the patented invention but also

1 the benefit that its end customers get, customers like IBM
2 and Cisco who are the ones that really need IBA in their
3 products.

4 These customers, as they told you, would have no
5 choice but to pay the increased price.

6 And why do I say that? They had no options. IBM
7 said it needed IBA. It was critical. They had no
8 alternative in the p6 products. Eventually they moved to
9 something else, but they also continued to use IBA even in
10 that other product, the p7 product.

11 And Cisco has paid the increased price when buying
12 bus converters from Cisco. Remember, SynQor sells it to
13 Cisco, they've paid our price.

14 And Cisco has also paid SynQor for using other
15 infringing bus converters, and they had to pay for that
16 use. That was the settlement agreement you saw, \$60 a unit
17 there.

18 And there are also a couple of other reasons that
19 a proper royalty is higher than the profit on Vicor's bus
20 converter. Recall, when Vicor said that the prior case was
21 about low-cost or low-priced knock-offs, well, that is how
22 Vicor priced its products in order to try to take the
23 market after the injunction.

24 Vicor wanted that -- you heard it -- second bite
25 at the apple with Cisco and others. By pricing low, Vicor

1 was able to ensure that Cisco would go with them instead of
2 with SynQor.

3 The sales to IBM were no different. Vicor decided
4 to price its BCMS to IB -- to IBM to establish a
5 relationship and earn future business. It was a
6 loss-leader. And that future IBM business, it turned out
7 to be incredibly valuable to Vicor.

8 Vicor was willing to lose money on its bus
9 converters to gain a valuable relationship with its large
10 customers. It could have charged more. It could have
11 passed that additional cost on to the customers.

12 Vicor points out that its customers asked for
13 lower prices. Does that surprise you? Customers always
14 ask for lower prices.

15 But where, as here, they had no real choice to
16 obtain the benefits that they needed, that valuable board
17 space savings, they would pay the increase. It is a tiny
18 fraction of the price of the expensive load boards.

19 And IBM and Cisco both told you that they had no
20 other option at the time they employed their IBA systems.

21 And we know, as I said, that customers like Cisco,
22 they paid SynQor's prices, which were admittedly higher,
23 but at the same time, we saw their scorecard. They graded
24 SynQor as one of their top suppliers.

25 Let's take a look at that. The proof is right

1 here in the scorecard from Cisco.

2 I'm not sure if you can pull it up, Dan, Mr. Bupp,
3 the Cisco scorecard. Oh, I --

4 Your Honor, I think we're on their -- there we go.

5 THE COURT: There we go.

6 MR. REIN: Remember the scorecard?

7 If Cisco would pay SynQor's prices even though
8 they were higher, there could be no doubt that they would
9 pay Vicor's price that could -- if it just passed the
10 royalty on.

11 And let me also remind you of the Court's
12 instruction on the parties' profits. With respect to
13 Vicor's profits, you were told -- and if we could put that
14 on the screen, Mr. Bupp -- the royalty may not be limited
15 or increased based on the actual profits the alleged
16 infringer made. You're not supposed to limit the royalty
17 based on Vicor's profits.

18 And as for SynQor's profits, let's look at that.
19 You were instructed that although SynQor's anticipated lost
20 profits may be considered to determine a reasonable
21 royalty, and then -- it also then says that the law does
22 not authorize the direct setting of the reasonable royalty
23 in the amount of SynQor's lost profits. So not the direct
24 setting, but it can be considered -- the anticipated lost
25 profits may be considered to determine a reasonable

1 royalty.

2 If the parties had sat down to negotiate a royalty
3 in 2006, they would have negotiated a royalty in line with
4 the profits that SynQor expected if it had gone on to sell
5 its own bus converters.

6 SynQor would not have wanted to cut itself out,
7 and all the authorization royalty agreements and the Cisco
8 settlement bear that out. You are entitled to consider
9 those prices and those royalties, and you should. They are
10 the best evidence that you have of an appropriate rate.

11 And you are also entitled and you should consider
12 that Vicor would be able to use these patent rights to open
13 up a huge customer relationship with IBM. They couldn't do
14 it without access to the patents. With the access to the
15 patents, they have the opportunity then legitimately to
16 open up a relationship with IBM.

17 And the same is true with Cisco and others. These
18 patents, patent rights, would have given Vicor an entry
19 point. They were critically important. They would have
20 permitted, for example, Vicor to have a second bite at the
21 apple.

22 And Vicor eventually projected that that second
23 bite at the apple would be worth \$100 million to Vicor.
24 Remember, we saw that in their own document, their
25 anticipated forecast of the value?

1 These factors would justify the royalty rates and
2 total amounts that SynQor is seeking here. It is a fair
3 amount, and it is in line with what others have paid.

4 Now, I told you I was going to circle back to
5 liability.

6 Judge Schroeder told you that a product can be
7 covered by more than one patent. He gave an example of a
8 patent on a table with legs, a top, and glue, then he said
9 a table with wheels could still infringe.

10 And in this case, Vicor's SAC technology, its SAC
11 topology, it is just the wheels on the table, an added
12 feature that even if patented does not change the fact that
13 Vicor committed patent infringement.

14 Let's look at a couple of instructions.

15 THE COURT: Mr. Rein, you have five minutes
16 remaining.

17 MR. REIN: Thank you.

18 If we could turn to -- well, I have the
19 instructions in front of me. They're not going to be on
20 the screen.

21 But I would call your attention to an instruction
22 on Page 14: A product may be covered by more than one
23 patent.

24 That's what you're told in these instructions.

25 But the existence of someone else's patent, even

1 if the product is covered by the -- I'm sorry, the
2 existence of an accused infringer's own patent does not
3 constitute a defense to infringement of someone else's
4 patent, even if the product is covered by the accused
5 infringer's patent.

6 That's an instruction -- it's an important
7 instruction in this case, and it makes you wonder why does
8 Vicor keep talking about its own patents? Why didn't it
9 look at SynQor's patents?

10 And then I would also direct your attention to
11 the -- an instruction on Page 15: If you find that each
12 and every requirement of a claim is present, then the claim
13 is infringed.

14 And then it goes on: That's true even if the
15 accused product may be more or less efficient or may
16 include additional features or functions not found in the
17 claims.

18 But Vicor keeps trying to suggest to you that its
19 added efficiency makes it exempt from these patent claims.
20 That's just not the law.

21 Now, as for the intent evidence, Vicor just --
22 SynQor marks its products to identify its patents. So in
23 doing the competitive benchmarking that Vicor did, Vicor
24 would see that SynQor's products are patented -- are
25 patent-protected, and specifically be made aware of

1 SynQor's '190 and '702 patents.

2 Vicor also had SynQor's data sheets, which also
3 indicate that SynQor's bus converters are patent-protected
4 and, again, call out the '190 and '702 patents.

5 The data sheets do more, they also indicate that
6 SynQor's bus converters are unregulated, employ synchronous
7 rectification, and are intended to be used in IBA systems.

8 All this should have been made -- should have made
9 Vicor aware that if it went on to sell bus converters with
10 these features for use in an IBA system, it was taking a
11 big risk.

12 And this, as you heard, is part of what triggers
13 Vicor's willful blindness, this in Vicor's awareness in
14 November of 2007 of SynQor's suit against the industry.

15 With all that information, Vicor should have taken
16 a look at these patents, but Vicor didn't. It buried its
17 head in the sand for at least three years. The deliberate
18 steps Vicor took to avoid learning of the infringement was
19 declining to look at the patent claims.

20 Dr. Vinciarelli doesn't think he has to look at
21 patent claims. This technology is so advanced.

22 And as you were also told to -- you need to
23 consider the totality of the circumstances, including
24 whether Vicor was relying on the advice of a competent
25 lawyer.

1 As Dr. Vinciarelli confirmed at trial, he and
2 Vicor did not rely on any such legal advice. Vicor
3 willfully blinded itself to a known risk.

4 Now, you just heard Vicor says that it had a
5 good-faith belief of non-infringement when it moved its
6 transition times to 25 percent for the IBCs.

7 That is no defense for the earlier ones that were
8 being sold. Dr. Vinciarelli acknowledged he didn't go back
9 and change the transition times of those.

10 And it is also no defense for the IBCs because we
11 told them that we thought those products infringe under the
12 Doctrine of Equivalents, a legal doctrine.

13 And did they come forward with an opinion of
14 counsel? No, they didn't rely on an opinion of counsel.
15 They just buried their head in the sand.

16 And you also heard Mr. Pak try to fill in some
17 gaps in Dr. Vinciarelli's testimony, testimony that was not
18 provided to you during trial.

19 He suggested that Dr. Vinciarelli had these
20 non-infringement defenses in his head, like in
21 synchronization. He didn't provide -- Dr. Vinciarelli
22 didn't provide that testimony to you. Just Mr. Pak.

23 They had no defenses in mind because, as
24 Dr. Vinciarelli told you, he didn't look at the claims. He
25 couldn't have a defense in mind.

1 This is just made up during closing arguments.

2 And the last thing I want to close on is the
3 testing that they're -- they continue to say we should have
4 done more testing to make sure that those earlier parts had
5 transition times less than 20 percent, they point to a
6 later part with different components, and they said they
7 tried to make those -- that bus converter track the earlier
8 products.

9 I think they were trying to suggest that because
10 it had transition times that were higher, they tuned it,
11 and that meant that the earlier products had shorter
12 transitions times.

13 How do you tune to earlier converters without
14 having the test results on those converters? They didn't
15 present those test results to you on the earlier
16 converters? How do you tune then? That makes no sense.

17 And also keep this in mind, these are Vicor's own
18 bus converters. If it thought that the transition times
19 were really more than 20 percent, don't you think they
20 would have tested it? They criticize us for testing
21 something that's identical with the same schematic and the
22 same components. But they didn't make one for themselves.
23 They didn't test it. They didn't present you with any, any
24 evidence of testing.

25 And now, I just want to close with one thing, and

1 that's some questions.

2 When you go back to the jury room, I want you to
3 ask yourself -- I want you to use your common sense and ask
4 yourself these questions.

5 Why didn't Vicor present you any testing of their
6 own parts at all?

7 Why not increase the transition times to 30 or 40
8 percent to avoid the Doctrine of Equivalents if the length
9 of the transition times is as unimportant as Vicor wants
10 you to believe?

11 Why not challenge the validity of the '702 patent?

12 Why wait three years to read the claims of the
13 '190 patent despite learning about it in 2007?

14 And, finally, why should Vicor get a better deal
15 and pay less than everyone else in the industry when they
16 were the last company left and refused to respect SynQor's
17 patents?

18 Let me conclude by thanking each and every one of
19 you from the bottom of my heart. We really appreciate the
20 careful attention that you paid to the evidence. I know it
21 was technical. But jurors like you, juries like you are a
22 critical part of this patent system.

23 So we very much appreciate your time. Thank you.

24 THE COURT: Thank you, Mr. Rein.

25 Ladies and gentlemen of the jury, it's time for

1 you all to be -- return to the jury room to begin your
2 deliberations on your verdict. Each of you will have a
3 copy of the charge that I've -- I gave you earlier this
4 afternoon and late morning.

5 The first -- the first thing you should do is to
6 select one among your number to serve as your foreperson
7 who will guide your deliberations and speak for you here in
8 the courtroom.

9 If at any time you need to recess during the
10 deliberations, please follow all of the instructions that I
11 have previously given you about your conduct during the
12 trial.

13 After you have reached your unanimous verdict,
14 your foreperson should fill in on the form your answers to
15 the questions and sign and date on the last page.

16 You should not reveal your answers until such time
17 as you are discharged unless otherwise directed by me, and
18 you should never disclose to anyone, including to me, your
19 numerical division on any question.

20 So -- and the final instruction is if at any time
21 you need to communicate with me for any reason during your
22 deliberations, please give a written message or question on
23 the paper that will be provided in the jury room and hand
24 it to the CSO outside the door. I will then respond as
25 promptly as I can either by doing so in writing or by

1 having you brought back into the courtroom so that I can
2 address you orally.

3 So at this time, Mr. Mitchell, if you would,
4 escort the jury to the jury room.

5 COURT SECURITY OFFICER: All rise.

6 (Jury out.)

7 THE COURT: Okay. Just a comment or two.

8 Did everybody get everything on the record they
9 wanted to before we had the jury in and began with
10 instructions? We were moving at a pretty fast clip there,
11 and I want to make sure everyone got everything protected.

12 Mr. Rogerson?

13 Y'all can be seated.

14 MR. ROGERSON: Yes, Your Honor. I just wanted to
15 make sure there's one objection. We noted -- I couldn't
16 recall if we made it this morning or not. But just for the
17 record, we wanted to maintain our objection, which I think
18 we made before, to the giving of an instruction on lost
19 profits.

20 THE COURT: Okay.

21 MR. ROGERSON: To make sure that's noted for the
22 record.

23 Thank you, Your Honor.

24 THE COURT: Okay. Good. Thank you, Mr. Rogerson.
25 Anything, Mr. Pak, from the Defendant?

1 MR. PAK: Nothing from the Defendant, Your Honor.

2 THE COURT: Okay. Good. All right.

3 All right. So we'll wait for the jury. You all
4 go -- don't get terribly far. You're welcome to leave the
5 building, though. Just leave a cell phone with
6 Mrs. Schroeder in the event we get a question or a verdict.

7 So we'll stand in recess until we hear.

8 MR. PAK: Thank you.

9 COURT SECURITY OFFICER: All rise.

10 (Recess.)

11 (Jury out.)

12 THE COURT: Okay. We are on the record at 4:55.

13 Counsel for Plaintiff and Defendant are here
14 present in the courtroom.

15 We received a note timed -- what's the time on
16 that note, does it say? Sorry.

17 MR. PAK: It doesn't have the time, Your Honor.

18 THE COURT: And indicating that the jurors wish to
19 understand how to view a thumb drive, 14-CV-287, which is
20 the case number, native PTX.

21 Mrs. Schroeder, our courtroom deputy, along with
22 the Court's IT specialist have gone to the jury room to
23 make sure they are doing it correctly. And if there's
24 something wrong with the laptop that's in there, we'll make
25 arrangements to get it replaced so that the jurors can see

1 what is contained on the thumb drive.

2 I've notified the parties that in receiving the
3 note that I just described, the jurors did ask whether they
4 would be permitted to go on home this evening, given the
5 hour, and return in the morning to begin their
6 deliberations.

7 And I discussed with the parties my normal
8 practice in this regard once deliberations have begun.
9 We're all on the jury's schedule. So if they want to
10 deliberate a little later into the evening, we can provide
11 dinner for them. If they need to go home at a certain time
12 and want to come back in the morning, that is certainly
13 fine with me.

14 So having discussed that with the parties, I think
15 that it is the agreement of both the Plaintiff and the
16 Defendant that we will just proceed according to our normal
17 practice in that regard. And so if they want to go home
18 now, they're welcome to go home now.

19 Did I correctly -- accurately state our
20 discussion?

21 MR. GILLAM: Yes, Your Honor.

22 MR. REIN: Yes, Your Honor.

23 THE COURT: Okay. Again, my normal practice in
24 situations like this is I don't see the need to bring the
25 jury back in from the jury room to explain. They remain

1 under the rules previously set forth about their conduct
2 during the course of the trial. Those were contained in
3 the final instructions, and I don't think they need to be
4 reminded of that.

5 So unless the parties disagree with that, we will
6 go ahead and release them at this time and have them come
7 back at 9:00 o'clock in the morning.

8 When they return, I will ask Mrs. Schroeder to
9 inform them that deliberations should not begin until all
10 jurors are present in the jury room and that they should
11 send a note up when all jurors have arrived and
12 deliberations have begun.

13 Any comments from either side? Questions?
14 Concern? Anything of that nature?

15 MR. PAK: No.

16 MR. GILLAM: No, Your Honor.

17 THE COURT: Okay. We'll be in recess.

18 MR. DACUS: Thank you, Your Honor.

19 MR. HATCHER: Thank you.

20 (Court concluded at 4:59 p.m.)
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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/S/ Shelly Holmes
SHELLY HOLMES, CSR, TCRR
CERTIFIED SHORTHAND REPORTER
State of Texas No.: 7804
Expiration Date: 10/31/2023

10/25/22
Date